LAW AND CONTEMPORARY PROBLEMS

THE NATIONALIZATION OF BRITISH INDUSTRIES

(TABLE OF CONTENTS ON INSIDE COVER)

SCHOOL OF LAW • DUKE UNIVERSITY
Vol. 16 AUTUMN, 1951 No. 4

LAW AND CONTEMPORARY PROBLEMS

A QUARTERLY PUBLISHED BY THE DUKE UNIVERSITY SCHOOL OF LAW
DURHAM, NORTH CAROLINA

VOLUME 16 AUTUMN, 1951 NUMBER 4

CONTENTS

THE NATIONALIZATION OF BRITISH INDUSTRIES

PUBLISHED QUARTERLY

WINTER, SPRING, SUMMER, AUTUMN

Subscription Price, $4.00 per Volume Foreign Subscription, $4.50 $1.25 per Number

(A supply of copies of nearly all issues is provided to fill orders for single numbers)

For information about microfilm (copies are now available in this form) write: University Microfilms, 313 N. First St., Ann Arbor, Mich.

Address all communications to LAW AND CONTEMPORARY PROBLEMS
DUKE STATION, DURHAM, NORTH CAROLINA

Entered as second-class matter December 10, 1946, at the post office, Durham, North Carolina, under the Act of March 3, 1879

LAW AND CONTEMPORARY PROBLEMS

VOLUME 16 AUTUMN, 1951 NUMBER 4

FOREWORD

This symposium does not attempt to debate the merits of the determination to nationalize certain industries in Great Britain; in so far as possible, it deliberately avoids any discussion of the whys and wherefores, pros and cons of this controversial issue. Instead, it proceeds upon the assumption that nationalization, rightly or wrongly, has been undertaken, and examines the methods used to accomplish this objective in the various industries, the problems encountered, and the solutions devised to meet them.

For example, one important question immediately arising is whether to pay any compensation to the former owners of a nationalized industry. If it is decided to do so, a host of other decisions with critical economic, social, and political consequences must be made. How shall individual holdings in the industry be evaluated—by whom and by what standards? What shall be the medium of payment—cash, stocks and bonds of the industry itself, with or without a government guarantee, or bonds or other securities of the government? What shall be the terms, interest rates, redemption periods, of any such securities? Shall these costs be made a charge on the earnings of the nationalized industry, or upon the treasury?

Other financial matters are equally troublesome after nationalization. How shall the industry be financed? By its own earnings, by direct government appropriations or subsidies, by private loans with or without government guarantees? If there are profits, shall they be directly covered into the government treasury and mingled with all other government receipts, or shall they be kept in separate accounts and used for wage increases or capital expenditures in the industry itself, or shall the industry's prices be reduced or its services improved? What sort of accounts should the industry keep and publish, and who shall audit these accounts—the regular government auditors, the industry's auditors, or private independent accountants?

The pricing policies of the nationalized industries are of necessity complex. Must prices be set high enough so that the industry will at least break even, and, if so, what about reserves for depreciation, amortization, wage increases, and capital expenditures? To what extent should government policies in the social areas such as the provision of certain services and products for low income groups force the nationalized industries to operate at losses? What about competition between the nationalized industries and other industries still under private control? Will the absence of any effective competition in certain areas lead to stagnation and other problems of cartel and monopoly growth?

Shall the employees of the nationalized industries be regarded as ordinary government civil servants? To what extent will the nationalized industries bargain collectively with unions and enter into agreements providing for such things as check-offs and closed shops? What about employee training programs? What is the role of the managerial employee in a nationalized industry?

How shall government control be exercised over the operation of those industries? Should management and operations be centralized or decentralized? Should cabinet ministers directly participate in the operation of the industries, and to what extent and in what manner can Parliament control these industries? How can the public and the consumers obtain effective redress for their complaints and grievances? What is the role of the judiciary?

What about the taxation of nationalized industries and to what extent, if at all, do they participate in the tort immunity and other privileges of the sovereign?

Most of these questions are discussed in this symposium, although obviously the final answers are given to few, if any, of them. The fact is apparent that once the decision has been made to nationalize, there are innumerable new difficulties which arise, and nationalization in and of itself does not offer either an easy way out for old problems or a simple solution for the new ones. It will not of itself cure an economically depressed industry, solve manpower problems, dissipate labor unrest, automatically increase production, or provide improved services. At the most, it is only a beginning.

An American lawyer, I think, must be particularly struck by two points. One is the incredibly careful, detailed, thorough, well-conceived and executed workmanship of the statutes which form the basis for nationalization. No doubt there are defects, but certainly one can only have the highest admiration for those who translated the ideas of nationalization into the concrete language of the statutes. Second, to an American, the comparative dearth of litigation over such sweeping and revolutionary legislation is almost incredible. Granting that the absence of our constitutional difficulties is to be expected, I still find remarkable the wide use made of negotiation, arbitration, and all forms of special commissions, in lieu of the regular courts. This is not to say that the British legal profession may not have played an important role in the mechanics of the nationalization program; but certainly the British courts appear to have had little, if any, direct participation in the solution of the fundamental issues involved in this nationalization. Moreover, I am certainly impressed with the relative lack of debate, criticism, and discussion among lawyers in Great Britain, at least as reflected in publications in British legal literature dealing with the nationalization program. I find it hard to imagine our American bar being so silent, so seemingly acquiescent or disinterested, and playing such a subordinate part, if any similar program on such a scale were ever proposed or carried out in this country.

ROBERT KRAMER.

THE NATIONALIZATION OF BASIC INDUSTRIES IN GREAT BRITAIN

CLIVE M. SCHMITTHOFF*

I

INTRODUCTION

On March 21, 1943, the Prime Minister of Britain, Mr. Winston S. Churchill, broadcast a fireside talk to the nation. He spoke of Britain's post-war aims, and while making it clear that in his opinion a revival of "healthy and vigorous private enterprise" at the earliest moment was vital for that purpose, said[1] that it was necessary

> to make sure that we have projects for the future employment of the people and the forward movement of our industries carefully foreseen, and, secondly, that private enterprise and state enterprise are both able to play their parts to the utmost.
>
> A number of measures are being and will be prepared which will enable the government to exercise a balancing influence upon developments which can be turned on or off as circumstances require. There is a broadening field for state ownership and enterprise, especially in relation to monopolies of all kinds.

Lord Beveridge commented on that speech as follows:[2]

> In dealing with the last of these evils—unemployment—the Prime Minister uses more than once a phrase which must have made the Quintilians of individualism stare and gasp: "State enterprise." By this phrase he recognizes that industry conducted by the state, that is to say, not subject to the test and motive of profit, may be enterprising. In his project of making "State enterprise and free enterprise both serve national interests and pull the national wagon side by side," he places on record a hope that the way to the practical end of ordered opportunity for all will be found along a middle course between conflicting ideologies.

These statements accurately describe the spirit in which the British people, after the second world war, began the Great Experiment of charting a "middle course between conflicting ideologies" by nationalizing some basic industries and establishing an economic system where "private enterprise and state enterprise are both able to play their parts to the utmost."

Has the Great Experiment succeeded? It is not the purpose of this symposium to answer that question.[3] Whatever the verdict of history will be, one thing is certain:

* LL.M. University of London; of Gray's Inn, Barrister-at-law. Lecturer in Legal Studies and Senior Assistant Member of Staff, The City of London College. General Editor, BUSINESS LAW AND ADMINISTRATION (1951); author, A TEXTBOOK OF THE ENGLISH CONFLICT OF LAWS (2d ed. 1948); THE EXPORT TRADE (2d ed. 1950); THE SALE OF GOODS (1951).

[1] WILLIAM H. BEVERIDGE, THE PILLARS OF SECURITY 189-190 (1943).

[2] The Times, Mar. 22, 1943, pp. 5-6.

[3] Mr. A. de Neuman, *infra*, p. 715, rightly points out that arguments for and against an affirmative answer can be advanced with equal facility.

the nationalization of coal,[4] iron and steel,[5] electricity[6] and gas,[7] transport by rail, road and inland waterways,[8] civil aviation,[9] and other economic activities[10] has altered the traditional pattern of life in Britain and, together with the welfare legislation enacted after the war,[11] has led to social changes[12] which might prove to be as radical in their effect as was the emancipation of the villeins in the fourteenth century and the industrial revolution of the eighteenth and nineteenth centuries.

Five years have now passed since the first nationalization acts were placed on the statute book. During that time there has been a steady growth of the law of nationalized industries, an administrative practice has been established in the public corporations, and their relations to the ministries, private industry, the public, and labor have been clarified. This development is overshadowed by the political controversy and has received little attention in legal and other literature. In this symposium it is intended to give a factual account of nationalization at work, to discuss the difficulties which those called upon to carry out the will of Parliament encountered, and to describe how they attempted to solve them. The authors invited to contribute to this symposium have been chosen for their expert knowledge, without regard to the colour of their political conviction; they have been given liberty of expressing whatever views they hold while writing from their particular technical angle. Their survey indicates how new ideas are blended with traditional institutions and how trends leading into the future are emerging.

II

HISTORICAL ANTECEDENTS

In 1937, Professor William A. Robson published his *Public Enterprise* which has the sub-title *Developments in Social Ownership and Control in Great Britain*.[13] The book, a symposium containing contributions by nine authors and edited for the New Fabian Research Bureau, was the first comprehensive work describing the various new public corporations—or as they were called in those days, public boards —which were created in the period between the wars. In the words of Professor Robson,[14]

[4] Coal Industry Nationalisation Act, 1946, 9 & 10 GEO. 6, c. 59 (as amended).
[5] Iron and Steel Act, 1949, 12, 13 & 14 GEO. 6, c. 72.
[6] Electricity Act, 1947, 10 & 11 GEO. 6, c. 54.
[7] Gas Act, 1948, 11 & 12 GEO. 6, c. 67.
[8] Transport Act, 1947, 10 & 11 GEO. 6, c. 49.
[9] Civil Aviation Act, 1946, 9 & 10 GEO. 6, c. 70, consolidated with other enactments into the Air Corporations Act, 1949, 12, 13 & 14 GEO. 6, c. 91, which is the Act in operation at present.
[10] See Professor W. Friedmann, *infra*, p. 576, and Mr. A. de Neuman, *infra*, p. 702.
[11] National Insurance Act, 1946, 9 & 10 GEO. 6, c. 67; National Insurance (Industrial Injuries) Act, 1946, 9 & 10 GEO. 6, c. 62; National Health Service Act, 1946, 9 & 10 GEO. 6, c. 81.
[12] LORD JUSTICE ALFRED T. DENNING, FREEDOM UNDER THE LAW 75 (1949); "The social revolution of today has changed all that. Parliament has put on the State the positive responsibility of seeing that everyone is provided with the necessities of life."
[13] (London, 1937). See further, LINCOLN GORDON, THE PUBLIC CORPORATION IN GREAT BRITAIN (London, 1938), and Friedmann, *The New Public Corporations and the Law*, 10 MOD. L. REV. 233, 377 (1947).
[14] PUBLIC ENTERPRISE 359 (Robson ed. 1937).

These boards grew up in a typically British fashion. They were not based on any clearly defined principle; they evolved in a haphazard and empirical manner; and until quite recently very few people were aware of their importance or even of their existence. Now suddenly they have become all the rage. Politicians of every creed, when confronted by an industry or a social service which is giving trouble or failing to operate efficiently, almost invariably propose the establishment of an independent public board.

Professor Robson's work had a profound influence on the development of the public business corporation after the war; on importance it can be compared with *The Modern Corporation and Private Property* by Berle and Means,[15] which in the Thirties greatly influenced the thought of company lawyers on both sides of the Atlantic. Like the latter, Professor Robson's symposium has now become a classic, but it is still a useful starting point for an investigation into modern problems of nationalization.

The authors writing in Professor Robson's symposium review the following enterprises:

(1) The Port of London Authority (1908),[16]
(2) The Forestry Commission (1919),
(3) The British Broadcasting Corporation (1926),
(4) The Central Electricity Board and other Electricity Authorities (1926),
(5) The London Passenger Transport Board (1933),
(6) The Coal Mines Reorganisation Commission (1930),
(7) The Agricultural Marketing Boards (1931),
(8) The Post Office,
(9) The organization of the cooperative movement.

It is interesting to compare that list with the principal nationalized industries treated in this symposium, *viz.*:

(1) The National Coal Board (1946),
(2) The Iron and Steel Corporation (1949),
(3) The British Electricity Authority (1947),
(4) The Gas Council (1948),
(5) The British Transport Commission (1947),
(6) The British Overseas Airways Corporation (1939),
(7) The British European Airways Corporation (1946),
(8) The British Broadcasting Corporation (1926).

Already in 1937, Professor Robson had doubt whether to include in his list the cooperative movement and the Post Office which he described as "the traditional method of organizing a socialized service";[17] he justified their inclusion by stating that they were added mainly for purposes of comparison. Yet, approaching, as he did, the problem from the angle of social ownership, the inclusion of those two enterprises into his list appears legitimate. In 1951, when the emphasis has shifted from

[15] (New York, 1932).
[16] The years in parenthesis refer to the date when the board was established.
[17] PUBLIC ENTERPRISE 9 (Robson ed. 1937).

social ownership and public boards to state ownership and public business corporations, it is evident that those two enterprises are different in character and purpose from the modern type of public corporation. Cooperative societies are, in essence, a form of private enterprise. Moreover, as an eminent cooperative planner admits,[18]

> . . . within the capitalist competitive system, the co-operative movement is being forced into the position of a capitalist organization to some extent.

Like the joint stock company, the cooperative society is owned by shareholders and guided by the principle of distributable profit, though in the case of the joint stock company the basis of distribution is the shareholding of the members and in that of the cooperative society it is the amount of the members' purchases. Whether the cooperative society represents a form of capitalist or social private enterprise, is irrelevant for our investigation because in any case it is a type of private as opposed to state enterprise.[19] The Post Office and the Forestry Commission[20] which appear in Professor Robson's list, are likewise dissimilar to modern nationalized industries. The Post Office is a department of state; its head, the Postmaster-General, is a minister of the Crown. The Forestry Commission, modeled after the Ecclesiastical and Charity Commissions,[21] was even in 1937 "more directly under parliamentary and Treasury control"[22] than the other boards listed by Professor Robson. Both types lack the managerial autonomy characteristic of the modern public business corporation. Further, the Agricultural Marketing Boards[23] which Professor Robson includes in his list are in a different category from the modern statutory corporations owning and managing nationalized industries; unlike the latter, they do not own the means of production but have merely regulatory functions or act as trading or distributive agencies. Although they may have a trading monopoly, as *e.g.*, the Milk Marketing Board possesses, their purpose is different from that of a nationalized industry because they serve sectional and not national interests, *viz.*, the benefit of those producing the goods marketed by them.

The five boards remaining on Professor Robson's list are of the public service board type which can claim parental relations to the post-war public corporation. Of these, the Port of London Authority which operates under the Port of London (Consolidation) Act, 1920,[24] and the British Broadcasting Corporation which is in-

[18] G. Walworth, *The Organization of the Co-operative Movement*, in PUBLIC ENTERPRISE, *id.* at 350.

[19] At the meeting of the Cooperative Party at New Brighton on March 25, 1951, much criticism of the nationalized industries was expressed. The Times, Mar. 26, 1951.

[20] Created by the Forestry Act, 1919, 9 & 10 GEO. 5, c. 58, as amended.

[21] John Parker, *The Forestry Commission*, in PUBLIC ENTERPRISE, *op. cit. supra* note 13, at 59, 61.

[22] *Id.* at 72.

[23] Created under the Agricultural Marketing Acts, 1931 and 1933, 21 & 22 GEO. 5, c. 42; 23 & 24 GEO. 5, c. 31, and further the Agricultural Marketing Act, 1949, 12 & 13 GEO. 6, c. 38. Under these Acts, schemes are operated for the marketing of milk, hops, pigs and bacon, and potatoes, tomatoes and cucumbers, and British wool.

[24] 10 & 11 GEO. 5, c. 173, as amended. See HUBERT LE MESURIER, THE LAW RELATING TO THE PORT OF LONDON AUTHORITY (1934).

corporated by royal charter,[25] are still in existence and operate nowadays under virtually the same constitution as in 1937. The Central Electricity Board, the Coal Mines Reorganisation Commission, and the London Passenger Transport Board were, as might be said retrospectively, transitional organizations which have been merged into the post-war corporations owning electricity, coal, and transport.

Among the pre-war boards which have an affinity with the post-war corporations two require particular attention, namely the Port of London Authority and the London Passenger Transport Board. Both have an interesting history. The constitution of the Port of London Authority, which nowadays owns and manages the docks and port installations of the largest port of Europe, was modeled after that of the Mersey Docks and Harbour Board which was created in 1857.[26] On the Mersey a keen competition had arisen between the ancient Liverpool docks, which since the reign of King John were administered by the municipal authorities of Liverpool, and the docks of Birkenhead, which are situated across the river and came into prominence in the first half of the nineteenth century when they were strongly supported by the Great Western Railway and the landowners of Cheshire.[27] The rivalry of the two dock areas was ended by the creation of the board in which was vested the property in the docks and other port installations on both sides of the river and which "was in addition entrusted with the conservancy of the lower river, the control of pilotage and the lighting and buoying of the harbour."[28] The Mersey Docks and Harbour Board, which is still in existence, is the first great public business corporation in Britain. The success of that Board greatly influenced the reorganization of the port of London at the beginning of the twentieth century.[29] In London wharves and docks were owned by joint stock companies which were unable or unwilling to modernize the dock installations in accordance with the requirements of the increasing trade of the port. In addition, the conservancy of the river Thames, which was under the control of public authorities, was inadequate. The great continental ports, in particular Hamburg, Antwerp, and Rotterdam, began to compete seriously with London, especially in the transit trade. Mainly as the result of Mr. Lloyd George's initiative, when he was president of the Board of Trade, the Port of London Authority was established by Act of Parliament in 1908.[30] Again, the property in the wharves, docks, and other port installations was vested in a statutory body which

[25] The first charter was granted on January 1, 1927 and limited to ten years. The second charter, granted on January 1, 1937, was likewise for ten years; the third charter, of January 1, 1947, which was limited to five years, is at present under review; the government proposes a charter for 15 years and a quinquennial review of the working of the Corporation (CMD. No. 8291.) On the changes in the constitutional provisions of the charters and consequential agreements, see D. N. CHESTER, THE NATIONALISED INDUSTRIES; A STATUTORY ANALYSIS 86 *et seq.* (London, 2d ed. 1951).

[26] By the Mersey Docks and Harbour Act, 1857, 20 & 21 VICT., c. CLXII.

[27] Dr. Lincoln Gordon, *The Port of London Authority*, in PUBLIC ENTERPRISE, *op. cit. supra* note 13, at 13, 14. The historical account of the Mersey Docks and Harbour Board and the Port of London Authority in the text is based on Dr. Gordon's article.

[28] *Id.* at 15-16.

[29] *Id.* at 16-17.

[30] By the Port of London Act, 1908, 8 EDW. 7, c. 68; for the Act in force at present, see note 24 *supra*.

was charged with the management of the port and the conservancy of the river.[31] The board consists of 28 members, 18 being elected by the "consumers" and 10 appointed by central or local authorities. Of the 18 elected members, 8 are nominated by the shipowners, 8 by the merchants, one by the rivercraft owners,[32] and one place goes to the wharfingers. The chairman of the Authority and the vice-chairman may be appointed from the outside and the membership of the board thereby be increased to 30. The present chairman of the Authority is Sir John Anderson. Here again, the establishment of the public board proved to be successful. In the post-war period, the Port of London, like other ports in the United Kingdom, encountered difficulties, particularly with respect to unofficial strikes[32a] and the turn-round of ships which was slower than was desirable,[33] but these difficulties were not connected with the constitution or organization of the Port Authority.

The other pre-war board which greatly influenced the post-war development was the London Passenger Transport Board. When examining its antecedents, one is tempted to refer to the old French rule that *la recherche de la paternité est enterdite*, because, in the words of Professor Robson[34] the bill

> was introduced into Parliament by a Labour Minister, continued by his Liberal successor in office, and piloted through its final stages by a Conservative Minister of Transport.

However, although the passing of the bill was due to the combined efforts of all political parties in Great Britain, the credit for the measure must undoubtedly go to Mr. Herbert Morrison. "To him can be traced not only the eventual creation of the [London Passenger Transport Board] but also the particular type of public corporation which emerged."[35] Already before the passing of the London Passenger Transport Act, 1933,[36] the uncoordinated growth of the London transport system was gradually reduced by an amalgamation and combination of underground and omnibus companies between 1907 and 1913 which resulted in 1924 in the emergence of a combine controlled by Lord Ashfield and owning the bulk of London's transport services. But the continued expansion and the call for better transport facilities which could only be obtained by considerable capital expenditure required more resolute measures. In these circumstances Mr. Herbert Morrison proposed the creation of the London Passenger Transport Board which became[37]

[31] But certain public functions are exercised by the City of London Corporations such as, *e.g.*, the health and sanitary authority in the Port of London; see Cory (William) and Son, Ltd. v. City of London Corporation, [1951] 1 K. B. 8; *aff'd*, [1951] 2 All E. R. 85 (C.A.).

[32] METHOD OF ELECTION OF ELECTED MEMBERS OF THE PORT OF LONDON AUTHORITY; REGULATIONS OF THE MINISTER OF TRANSPORT, S. R. & O., 1930, No. 332.

[32a] See the LONDON DOCK LABOR REPORT (LEGGETT REPORT) (H.M.S.O., May 18, 1951).

[33] See REPORT OF THE WORKING PARTY ON THE TURN-ROUND OF SHIPPING IN THE UNITED KINGDOM PORTS, REPORT TO THE MINISTER OF TRANSPORT (1948).

[34] PUBLIC ENTERPRISE, *op. cit. supra* note 13, at 359. The Ministers referred to by Professor Robson were: Mr. Herbert Morrison, Sir Percy John Pybus, the Honorable Oliver Stanley.

[35] Ernest Davies, *The London Passenger Transport Board*, in PUBLIC ENTERPRISE *op. cit. supra* note 13, at 155, 156. The historical account of the Board in the text is based on Mr. Ernest Davies' article.

[36] 23 & 24 GEO. 5, c. 14.

[37] Davies, *supra* note 35, at 155.

the accepted model of the Labour Party and the trade unions for the organization of socialized industry.

On the appointed day, *viz.*, July 1, 1933, the tubes, suburban railways,[38] busses, coaches, and trams of the companies and local authorities concerned vested in the Board, which issued five classes of stock as compensation for the transfer or acquisition of the undertakings. Of great interest is the procedure for the appointment of the members of the Board. In the original, socialist, bill it was provided that the members should be appointed by the Minister of Transport. This proposal was dropped by the National Government which eventually carried the bill through Parliament because it was feared that that arrangement might involve "the risk of political interference in constituting a business body."[39] The appointment of members of the Board was entrusted to "Appointing Trustees" who consisted of the heads of local government and professional bodies such as the London County Council, the Law Society, the Institute of Chartered Accountants, and the Committee of London Clearing Bankers, and further the chairman of the Board itself. The first chairman of the London Passenger Transport Board was Lord Ashfield, who held office until 1947. The Board operated the London transport system from July 1, 1933, to January 1, 1948 when the Transport Act, 1947, came into force, under which the undertakings of the Board vested in the British Transport Commission and the Board after a transitional period will have to be dissolved;[40] but the former activities of the Board are carried on by a separate Executive of the Commission, the London Transport Executive, which is an agent of the Commission.[41] The Transport Act, 1947 has thus nationalized undertakings not only of private enterprise and municipal authorities, but also of a nationalized industry.

When comparing the two types of pre-war boards which had a decisive influence on the post-war development, the following points emerge. First, in the early days the constitution of the board was greatly influenced by the conception of trust which likewise had a considerable influence on early English company law, particularly between 1825 and 1862.[42] The Mersey Docks and Harbour Board and the Port of London Authority are conceived as public trusts though the property owned by the boards was vested in a corporation and not the trustees (the members of the board). Later the conception of public trust gave way to that of a business body; this change, already reflected in the constitution of the London Passenger Transport Board, was accelerated after the war. Secondly, the pre-war public boards were completely autonomous—the controlling interest in them was not in the hands of

[38] With the exception of those owned by the four Railway Companies (S. R.; G. W. R.; L. & N. E. R.; L. M. S.) which remained in private ownership until the coming into operation of the Transport Act, 1947.

[39] STATEMENT AS TO CERTAIN MODIFICATIONS WHICH IT IS PROPOSED TO MAKE IN THE LONDON PASSENGER TRANSPORT BILL, 1931-1932. CMD. NO. 4133 (1932).

[40] Transport Act, 1947, §24.

[41] *Id.* §15.

[42] In 1825 the Bubble Act, 1719, was repealed and in 1862 the first great Companies Act (25 & 26 VICT., c. 89) admitting the incorporation of companies by registration was passed.

the government, but in those of the consumers. The latter exercise a direct control in the Port of London Authority: their representatives, the elected members, can outvote the appointed members. In the London Passenger Transport Board, the constitution of Appointing Trustees was intended to provide for indirect representation of the consumers who were too large a class to elect the members of the Board directly.[43] Thirdly, the operations of the two pre-war boards were on a regional and not a national scale.

III

MAIN FEATURES OF NATIONALIZATION

A.

State control of industry might be supervisory, regulatory, or proprietary. Supervisory control is normally exercised by the requirement of licenses, as is the case in England with respect to public houses, theatres, building, exports and imports, and many other instances of industrial and commercial activity; where state interference is limited to supervision, the ownership in the undertakings concerned is in private hands and those controlling them have considerable freedom in their management. Regulatory control is exercised, *e.g.*, in the United States of America over public utility enterprises[44] and in the United Kingdom by means of price control; here the ownership in the undertakings remains in the hands of private *entrepreneurs* but their discretion of management is considerably restricted by government regulation. Proprietary control is the strictest type of control which the state can exercise; under this system the ownership in the undertakings affected is vested in the state or statutory bodies which are charged with the management of them in the national interest and exercise the full control normally associated with the conception of ownership. The nationalized industries in Great Britain fall within the third category but the strictness of proprietary control is mitigated by the transfer of ownership in the nationalized industries to a new form of industrial organization of very peculiar character, *viz.*, the quasi-autonomous public corporation.

In every instance in which an industry formerly owned by private enterprise was transferred to public ownership, the procedure by which the transfer was effected was a *vesting provision* in the nationalization act which provided that on the appointed day certain assets should vest in the corporation created by the act[45]—a provision which resulted in the consequential divesting of the former owners. A typical provision of this kind is Section 12 of the Transport Act, 1947, which deals

[43] CHESTER, THE NATIONALISED INDUSTRIES, *op. cit. supra* note 25, at 5 (1st ed.), observes that the ministerial control over the P. L. A. is stricter than over the L. P. T. B.

[44] J. C. BONBRIGHT, PUBLIC UTILITIES AND THE NATIONAL POWER POLICIES (1940).

[45] In the case of the Bank of England and Cable and Wireless, Ltd., in nominees of the Treasury. Bank of England Act, 1946, 9 & 10 GEO. 6, c. 27, §1(1)(a); Cable and Wireless Act, 1946, 9 & 10 GEO. 6, c. 82, §1(1)(a).

with the acquisition of railway and canal undertakings by the British Transport Commission. It states:

> 12. *Vesting of undertakings.* (1) Subject to the provisions of this Act, the whole of the undertakings of the bodies of persons specified in the Third Schedule to this Act, being the bodies who fall within the class described in the next succeeding section, shall, on the first day of January, nineteen hundred and forty-eight (hereafter in this Part of this Act, and in the other provisions of this Act so far as they refer to the acquisition by the Commission of the said undertakings, referred to as "the date of transfer"), vest by virtue of this Act in the Commission.

The conveyancing device of vesting by operation of law is familiar in the law of succession, bankruptcy, and trading with the enemy.

As in most cases the assets which under the nationalization act were to vest in the corporations, were, before vesting date, held by companies, the acquisition of those assets could be carried out in two different forms. The vesting provision could provide for the transfer of certain real and personal property owned by the companies, such as coal mines, railway wagons, and gas undertakings, or alternatively, for the acquisition of the shares in those companies. The former is a direct, open method of nationalization, the latter an indirect form.[46] The direct method was applied to the nationalization of coal, transport, electricity, and gas. The indirect method was used for the transfer to public ownership of iron and steel undertakings, the Bank of England, and Cable and Wireless Ltd.[47] The distinction between those two methods is considerable. Under the direct method, the compensation which usually consisted of stock issued by the statutory corporation,[48] took the place of the transferred capital assets of the affected companies which continued their corporate existence[49] but ceased to be actively engaged in business; they had three courses open: they could go into liquidation,[50] or continue as investment or finance companies,[51] or sell the compensation stock and start again in business in a field still open to private enterprise; the decision on the course to be adopted depended on the shareholders. Where the indirect method of nationalization was employed, only the controlling interest changed hands and compensation was directly paid to the shareholders; this method was, in particular, adopted where it was feared that a direct transfer of assets might lead to a disruption of the industrial or commercial activities of the companies.

[46] For details, see Professor W. Friedmann, *infra*, p. 576, and Dr. Mary Bell Cairns, *infra*, p. 601. Dr. Cairns has made a detailed study of the various methods of nationalization because, as she rightly observes, the method of compensation varied according to the nationalization procedure employed.

[47] Cairns, *infra*, pp. 601-602.

[48] Mr. G. F. Wheldon, *infra*, p. 627.

[49] The Transport Act, 1947, §24, provides for the winding-up and eventual dissolution of railway and canal undertakings.

[50] Scottish Insurance Corporation v. Wilsons and Clyde Coal Co., Ltd., [1949] A.C. 462; Prudential Assurance Co. v. Chatterley-Whitfield Collieries, [1949] A.C. 512; *Re* Isle of Thanet Electric Supply Co., [1949] 2 All E. R. 1060 (C.A.).

[51] As did the Cable and Wireless (Holding) Ltd.

In Great Britain, nationalization was normally carried out by the direct method of vesting; the indirect method was only employed where special conditions prevailed.

B.

A second feature of British nationalization legislation is its axiomatic insistence on the principle that compensation must be paid for assets transferred from private to national ownership. The importance of this feature cannot be overrated. Dr. Mary Bell Cairns, who examines the problems arising in connection with the assessment and distribution of compensation, rightly points out that the right to compensation is founded on old, established, constitutional practice and concludes that "the principle of compensation for the expropriation of property is an integral part of the English legal and political system."[52]

The right to compensation is one of the features which distinguish the nationalization of basic industries in Britain from the expropriation of property carried out in communist countries. Another distinguishing feature is the place allocated to state enterprise in the fabric of the national economy; while communist countries have established an all-embracing system of state economy, and private ownership, if admitted at all, is admitted only by sufferance and occupies a subordinate place in the national economy, in Britain the system of private ownership is fully maintained and developed and the corporations owning and managing nationalized industries are integrated into that system as a kind of super-companies. A third distinction is that in communist countries the expropriation of the means of production and distribution is a tenet of Marxist doctrine while the nationalization legislation in Britain is, on the whole, more liberal than socialist in outlook and has been rightly described as follows:[53]

> The post-war 1945 nationalization acts in Great Britain cannot be regarded unequivocally as milestones on the road to a socialist new Jerusalem. They are in fact compounded of an odd mixture of socialist theory, liberal expediency and political empiricism.

The distinction between nationalization with compensation and expropriation or confiscation without it is recognized by the English courts, as a comparison of Re *Baku Consolidated Oilfields, Ltd.*[54] and Re *Eastern Telegraph Co., Ltd.*[55] shows. In the former case a winding-up petition was presented in 1943 by shareholders of an English company which before 1919 had acquired oilfields in or near Baku but could not obtain title to them because they were confiscated by the Soviet authorities. The company had considerable assets in England which upon winding-up would have become divisible among the shareholders. Bennett, J., who granted the petition, said in the course of his judgment:[56]

[52] Cairns, *infra*, pp. 594 and 619.
[53] Beacham, *Nationalization in Theory and Practice*, 64 Q. J. ECON. 557 (1950).
[54] [1944] 1 All E. R. 24 (Ch. D.).
[55] [1947] 2 All E. R. 104 (Ch. D.).
[56] *Re* Baku Consolidated Oilfields, Ltd., *supra* note 54, at 25.

It seems pretty clear that, in no true sense of the word did the Baku Consolidated Oilfields, Ltd., carry on any business at all. It had been engaged since 1920 in an endeavour to substantiate a claim against the U.S.S.R. Government for loss by confiscation of the properties it was formed to acquire, and for which it has paid. . . . It is clear from the evidence that the directors of the company no longer expect their claims to be met by sums coming from Russia.

In Re *Eastern Telegraph Co., Ltd.,* the company owned a considerable portion of shares in the Cable and Wireless Ltd. which, by virtue of the Act of 1946, vested on November 6, 1946 in nominees of the Treasury. Before compensation was paid, preference shareholders petitioned for a winding-up order, relying, *inter alia,* on the *Baku* case. Jenkins, J., refused the order. He distinguished the *Baku* case in fact and law and held that as long as the compensation was not assessed and fixed, the petition was premature. He said:[57]

That transaction is not yet complete. The compensation has to be assessed and received. The amount of compensation is a matter of great importance, and it is obviously desirable in everybody's interests—both in the interests of the preference stockholders and of the ordinary stockholders—that the company's case as to the amount of compensation should be cogently and effectively put in order that the compensation received may be as large as possible. It seems to me that the proper people to look after that matter are the directors of the company . . . It would be wrong at this juncture to make a compulsory order which would have the effect of removing them from office, and which would bring in a liquidator who, capable and expert as he might be, would not have the same knowledge as the directors have.

Apart from the right to compensation, there is another fundamental distinction between nationalization and expropriation. The latter usually contains a *discriminatory element* which is absent from the former. In Great Britain, no discrimination has been practiced on account of the nationality, domicile, or other personal criteria of the companies or persons owning the assets acquired by the state. The test of nationalization was in the words of Mr. Herbert Morrison, then Lord President of the Council,[58]

whether, in the circumstances, the industry was likely to be better run by free competitive competition, private enterprise, or free monopoly private enterprise, or controlled and supervised monopoly enterprise, or by public enterprise of one sort or another. It was the public interest that counted and the real field for argument was how best could the industry be organised or managed with a view to achieving economic public advantage.

C.

Perhaps the most important feature of British nationalization legislation is that it has given rise to a new form of business organization, the public business corporation. Professor W. Friedmann who investigates the "Legal Status and Organization of the Public Corporation,"[59] divides the public corporation into three classes: the

[57] *Re* Eastern Telegraph Co., Ltd., *supra* note 55, at 111.
[58] Address to the Board of Trade of the City of Toronto, The Times, Jan. 11, 1946, p. 3.
[59] *Infra,* p. 576.

commercial public corporation, the social service corporation, and the supervisory corporation. The emergence of the first named type and its separation from the other two types of public corporations is one of the most significant developments in the law of business administration in post-war Britain.

From the legal point of view, the crucial event in that development was the decision of the Court of Appeal in *Tamlin v. Hannaford*,[60] where it was held that the public business corporation was neither a government department nor an agent of the crown but[60a] "a commercial corporation . . . that . . . acts on its own behalf, even though it is controlled by a government department," and that, consequently, it was not entitled to the immunities and privileges of the Crown. The beneficial effect on English law of this great decision will be gathered from Professor W. Friedmann's comparison of the judgment with Australian decisions.

The outstanding characteristic of the public business corporation is its quasi-autonomous status. While it is a legal entity which pursues industrial and commercial objects in the same manner as a public company and enjoys independence in matters of management and administration, it is subject to the direct control of a minister and indirect control of Parliament in matters of policy and its board is invariably appointed by a minister. In that respect the post-war public corporation follows the model of the socialist proposal for the organization of the London Passenger Transport Board and differs from the boards actually created before the war which were fully autonomous.

The peculiar character of the public business corporation is best understood when it is compared with the company. Three aspects require, in that respect, particular attention: the proprietary position; the attitude to the profit motive; and the relation to labor. As regards the first, it should not be thought that the place filled in the company by the body of shareholders is in the public corporation merely a vacuum. The business which the corporation is charged to perform, is the business of the taxpayer who, in the words of Denning, L. J., in *Tamlin v. Hannaford*,[61] "is the universal guarantor of the corporation." Unlike the shareholders in many public companies, the nation takes a considerable and constant interest in the activities of the corporations. Their business is transacted in the limelight of public opinion; matters which if they affected companies, would hardly be noticed, are fully—and properly—discussed by the press from every political angle as matters of public concern. In a democratic country where freedom of the press and of discussion is preserved, the proprietary interest in the public corporation is thus more powerful than in the private company and, if need be, can assert itself through the Parliamentary institutions.

[60] [1950] 1 K.B. 18 (C.A. 1949); [1949] 2 All E. R. 327 (C.A.). The decision is analyzed by Professor Friedman, *infra* p. 588, and Mr. Charles Winter, *infra*, p. 692. See further R. v. South Wales Traffic Licensing Authority; *ex parte* Ebbw Vale Urban District Council, [1951] 1 All E. R. 806.

[60a] [1950] 1 K.B. 18, 25; [1949] 2 All E. R. 327, 330.

[61] *Id.* at 23, 2 All E. R. at 328.

As regards profits, it is sometimes said that the public corporation does not aim at the making of profit but at the earning of revenue to cover its expenditure.[62] This view is, it is believed, fallacious. While all nationalization acts establish the principle of "budget-balancing" for public corporations,[63] none prohibits, or even discourages, the making and accumulating of profits. In fact, from the legal point of view, the distinction between profit and revenue makes little sense in public corporations. Thus, Section 3(4) of the Transport Act, 1947, makes it incumbent on the British Transport Commission to levy such fares and other charges

> as to secure that the revenue of the Commission is not less than sufficient for making provision for the meeting of charges property chargeable to revenue, taking one year with another.

Section 92 then authorizes the accumulation of a general reserve without any limitation as to the amount but with the direction that it shall only be applied for the purposes of the Commission. Section 93 begins with the following words:

> The Commission shall charge to revenue in every year all charges which are proper to be made to revenue, including, in particular, proper allocations to general reserve. . . .

It is evident from those provisions that the Commission—and the same applies to the other corporations—is as free as a private *entrepreneur* to *make* and *accumulate* profits. However, unlike the latter, it cannot *distribute*[64] them but has to "plough them back" into the enterprise. Apart from that legal distinction there is, however, a considerable difference in the attitude to the profit motive; a private *entrepreneur* is free to overcharge his consumers, to underpay his labor, or to waste his plant in order to make profit, as long as he keeps within the law and thinks that it is economically justified; in connection with a company, Evershed, M. R., observed[65] recently that it is

> not necessary to require that persons voting for a special resolution should, so to speak, dissociate themselves altogether from the prospect of personal benefit and consider whether the proposal is for the benefit of the company as a going concern.

The attitude of public business corporations to those aspects of profit-making is fundamentally different; the corporations are, so to speak, *entrepreneurs* with a national conscience.

[62] See, *e.g.*, Lord Beveridge's observations, *supra* note 2.

[63] See Mr. A. de Neuman, *infra*, p. 735. The requirement of budget balancing is a capitalist and not a socialist requirement. It has given rise to considerable controversy among economists favoring the marginal cost principle and those favoring the average cost principle. See Beacham, *supra* note 53, at 556-557. The average cost principle is now generally accepted.

[64] This point is rightly stressed in Haldane, *The Central Electricity Board and Other Electricity Authorities*, in PUBLIC ENTERPRISE, *op. cit. supra* note 13, at 149. The Companies Act, 1948, 11 & 12 GEO. 6, c. 38, §19 provides that a company which by its articles prohibits the distribution of profits and serves a general useful object, might be granted dispensation with the requirement of embodying the word "Limited" in the corporate name.

[65] In Greenhalgh v. Arderne Cinemas, Ltd., [1950] 2 All E. R. 1120, 1126.

In labor relations, the corporations are employers; labor disputes arise between them and their employees in the same manner as between a private employer and his men. They negotiate with the trade unions representing the men, and infinite patience is required to establish satisfactory conciliation, negotiation, and consultation machinery on all levels; but, as Mr. W. Kenneth Gratwick points out,[66] mutual confidence and the will to cooperate is more important in labor relations than machinery for the settlement of disputes; in that respect, as in their attitude to profit, the corporations bear a responsibility to the nation.

In the result, the quasi-autonomous character of the public business corporation creates tensions. That, in itself, is no misfortune. Tensions exist in every corporate body; in fact, the corporate organization is often a convenient vehicle to lessen social tensions. In the company, for instance, the managerial and the proprietary interest, the majority and the minority, equity, preference share and loan capital might sometimes conflict. The important question is whether, in the end, the organization can accommodate the different interests or whether the friction resulting from those tensions will break the organization. In that respect, the public business corporation is still in the experimental stage. The principal source of strain is its strange dualism of commercial independence and political control; secondary sources of tension which sometimes are apparent, are conflicts of the managerial interest of the corporations with the interests of their consumers and employees. As regards the principal centrifugal forces, the tendency is at present to emphasize the business character of the corporations. That is due to three causes: it stresses the historical continuation, it is escapism from political controversy into the practical world of achievement, and it contributes to the integration of the new type of organization into the national economy which is founded on private enterprise. From the constitutional point of view, the clear recognition of the business character of the public corporation owning and managing a nationalized industry is probably the most formidable gain of the law of nationalized industries during the past five years, but that position appears now to be consolidated. At present, the true difficulty is on the other end of the scale: it concerns the delimitation of the managerial functions of the corporation from Parliamentary and ministerial control. Mr. Charles Winter, who examines these problems,[67] discusses the constitutional conventions and administrative precedents which begin to emerge; the indirect control of Parliament over the corporations is taking form and shape, but how gradual that process is might be gathered from the fact that only at the end of 1950 the government conceded the important principle that the activities of public corporations should be reviewed by a committee, including a limited number of members of Parliament, at regular intervals of five or seven years in a manner similar to that applied to the British Broadcasting Corporation when the renewal of its charter was under consideration.

[66] *Infra*, p. 652. The statutory machinery of negotiation and arbitration of labor disputes in nationalized industries is described by TURNER-SAMUELS, INDUSTRIAL NEGOTIATION AND ARBITRATION, PART IV (1951).

[67] *Infra*, p. 670.

The even more important problem of direct contacts between the parent minister and the board of the corporation is, as far as the public is concerned, still shrouded in mystery. It cannot, therefore, be said how far the definition of the spheres of ministerial policy-making and corporate management of affairs has progressed. It might be recalled that that delimitation caused considerable difficulty in the Tennessee Valley Authority; in the first years the three members of the board discharged both kinds of functions, and only in 1937 the two functions were separated and the management and administration entrusted to a general manager while policy making remained the sole concern of the board.[68] As in practice the functions of policy making and management overlap, the relationship of the corporation to the parent minister is the most sensitive and, perhaps, the weakest part of its constitution. The ultimate fate of the public business corporation depends on its ability to establish an equilibrium between ministerial influence and managerial independence.

Compared with this fundamental problem, the reorganization of public business corporations in the light of experience gained during their work is of secondary—though not negligible—character. The public corporation, like a form of private enterprise, has to adapt its constitution to changing circumstances and demands. Thus, in 1949 it was thought expedient to divide the Road Transport Executive originally created by the Transport Act, 1947, into two Executives, *viz.*, the Road Haulage Executive and the Road Passenger Executive,[68a] and at present the question of decentralization of the National Coal Board is much discussed.[68b]

IV

NATIONALIZATION AND PRIVATE ENTERPRISE

The nationalization of basic industries had considerable repercussions on the economic behavior and legal structure of industrial and commercial undertakings which continued to remain in private ownership. In particular, it clarified the attitude of English law to the problem of private monopoly and indirectly influenced the reform of company law.

As regards the former, the address of Mr. Herbert Morrison which was referred to earlier,[69] makes it clear that the labor government did not adopt the demand of socialist theorists that a private monopoly enterprise was invariably ripe for nationalization. The passing of the Monopolies and Restrictive Practices (Inquiry and Control) Act, 1948,[70] gave formal recognition to that view because the Act provides pro-

[68] C. HERMAN PRITCHETT, THE TENNESSEE VALLEY AUTHORITY 153-165 (1943).

[68a] BRITISH TRANSPORT COMMISSION (EXECUTIVES) (No. 2) ORDER, 1949 (S. R. 1949, No. 1130).

[68b] See C. G. LANCASTER, M.P., (WITH SIR CHARLES REID AND SIR ERIC YOUNG), STRUCTURE AND CONTROL OF THE COAL INDUSTRY (1951). The authors of this pamphlet which is published by the Conservative Political Centre, recognize that public ownership in the industry has come to stay and argue in favor of a measure of regional decentralization.

[69] See note 58 *supra*.

[70] 11 & 12 GEO. 6, c. 66; see Ivamy, *The Control of Monopolies*, 17 SOL. 153 (1950); *Further Developments in Resale Price Maintenance and Monopoly Control*, 18 SOL. 55 (1951).

cedures for the investigation into private monopoly enterprises and for their control if they operate against the public interest.

It is well known that in matters of monopoly and trade restraint American law is fundamentally different from English law.[71] The attitude of the English courts to private monopoly and trade restraint may be gathered from the observations of Lord Parker in *Attorney General of the Commonwealth of Australia v. Adelaide Steamship Co.*,[72] a Privy Council case dealing with the Australian antitrust legislation, and of Asquith, L. J., in *Monkland v. Jack Barclay, Ltd.*[73] In the former case, Lord Parker who delivered the opinion of the board, reviewed the attitude of the common law in a passage which has become the *locus classicus* of the subject:[74]

> . . . a contract in restraint of trade, though reasonable in the interests of the parties, may be unreasonable in the interests of the public if calculated to produce that state of things which is referred to by Lindley and Bowen, LJJ.,[75] as a pernicious monopoly, that is to say, a monopoly calculated to enhance prices to an unreasonable extent. . . . The onus of shewing that any contract is calculated to produce a monopoly . . . will lie on the party alleging it and . . . if once the Court is satisfied that the restraint is reasonable as between the parties this onus will be no light one.

In *Monkland v. Jack Barclay, Ltd.*, the "covenant system" of the British Motor Trade Association was discussed. The supply of new cars to buyers in Britain falls short of the demand in consequence of the requirements of the export trade, and a buyer has to sign a covenant whereby he undertakes not to re-sell the car within twelve months after its delivery.[76] All car manufactures adhere to the scheme and are obliged to stop the supply of cars to dealers who sell new cars without obtaining the customer's signature to the covenant. The covenant scheme, which is a voluntary trade arrangement, is obviously strongly restrictive in character. In the case before the court, a buyer bought a car (but did not obtain delivery) before the scheme was extended to cars of the particular manufacture in question and his contract did not contain a covenant against re-sale; later, the system was extended and the dealer requested the buyer to sign the covenant; on the buyer's refusal he appropriated the car to the next customer on his waiting list. The buyer sued for damages, but the court dismissed the action and the Court of Appeal affirmed that decision for reasons connected with the construction of the contract in issue. In the course of the argument in the Court of Appeal, counsel for the dealer submitted that the maintenance of the covenant system was so important that a delivery of a car to a cus-

[71] For discussions of these differences, see: Meier, *A Critique of the New British Monopoly Act*, 48 MICH. L. REV. 329 (1950); Note, *The British Monopolies Act of 1948: A Contrast with American Policy and Practice*, 59 YALE L. J. 899 (1950).

[72] [1913] A. C. 781.

[73] [1951] 1 All E. R. 716.

[74] Attorney General of the Commonwealth of Australia v. Adelaide Steamship Co., Ltd., *supra* note 72, at 796-797.

[75] In Maxim Nordenfelt Guns and Ammunition Co. v. Nordenfelt, [1893] 1 Ch. 630, 668, *aff'd*, [1894] A.C. 535.

[76] The time has now been extended to two years.

tomer who refused to sign it was contrary to public policy! This argument in favour of a "good" restraint was rejected by Asquith, L. J., who delivered the judgment of the court, *obiter*, as savoring of paradox:[77]

> The policy of the law still leans towards free trade. . . . The merits of the covenant scheme and the alleged disadvantages of not enforcing it do not seem to us in the least incontestable. . . . It was suggested by counsel for the defendants that the Motor Trade Association's covenant scheme had the approval of the government or of government officials and that this was in some way relevant to the question whether a contract which departed from it was or was not contrary to public policy. . . . We think that this is an unfounded suggestion. What one government approves its predecessor or successor may condemn, and, if the suggestion were acted on, precisely the same contract might have to be held void when government A was in and valid when government B was in power. The distinction between political policy and public policy was firmly drawn in *Egerton v. Brownlow*.[78]

It is not surprising that the Act of 1948, carried through Parliament by a government which itself created large monopolistic enterprises of public character, continued the policy of the law to differentiate between harmless monopolies and those conflicting with the public interest. The Act exempts from its purview monopolies in favor of the nationalized industries by providing that no reference under it can be made where the monopoly is expressly authorized by Act of Parliament (§2(1), proviso);[79] it thus applies only to conditions constituting a private monopoly which might exist as regards the supply, the processing, and the export of any goods, including buildings and structures, ships, and aircraft (§2(1); §20(1)). Monopolistic or restrictive conditions are present where

> (a) at least one-third of all the goods in question or any substantial part thereof are supplied by or to one person, or by or to two or more persons who are an inter-connected group of companies within the Companies Act, 1948, Section 154, or who conduct their affairs by formal arrangement or otherwise in such a manner as to prevent or restrict competition; or
>
> (b) no goods of the kind in question are supplied in the United Kingdom or any substantial part thereof as the result of any agreement or arrangement, whether legally enforceable or not (§§3-5).

A Monopolies and Restrictive Practices Commission is set up which consists of not less than four and not more than ten members appointed by the Board of Trade (§1); the present chairman is Sir Archibald Carter. The Board of Trade has power to refer matters to the Commission, and two types of references are provided: *the limited reference* which requires the Commission to investigate and report on facts, and *the full reference* which requires it, in addition, to report whether the alleged

[77] Monkland v. Jack Barclay, Ltd., *supra* note 73, at 723.
[78] 4 H. L. Cas. 1 (1855).
[79] This does not apply to monopolies based on patents or trade-marks.

monopolistic or restrictive conditions operate, or may be expected to operate, against the public interest (§6). The reports of the Commission are normally laid before Parliament and published (§9). Where, on a full reference, the Commission finds that monopolistic or restrictive conditions operate or are likely to operate against the public interest, or the House of Commons resolves so, the minister concerned may take remedial or preventive action; this is done by an order which has to be approved by each House of Parliament and which may declare unlawful the agreement or arrangement in question or make other provisions (§10(2)). The order can be enforced by injunction or other civil proceedings by the Crown, and the making of the order does not limit the right of any other person to bring civil proceedings, but no criminal proceedings lie for a contravention of the order (§11). So far, eight references have been made to the Commission[80] and one report, *viz.*, on dental goods, has been published;[81] this report, made on a full reference, stated that monopolistic conditions were present and that certain rules of the trade association of dental manufacturers and traders operated against the public interest, but the Commission added that no great abuse of powers had actually taken place; the Minister of Health who is the competent authority to act in that instance, has not yet made an order. The Monopolies Act of 1948 has not had a profound effect on private monopolistic enterprise in Great Britain; in particular, it did not enable the government to deal effectively with the practice of re-sale price maintenance which prevents shopkeepers from reducing prices laid down by the manufacturer or other supplier. In June, 1951, it was announced that the government intended to introduce legislation to make illegal

(1) collective arrangements designed to ensure that goods shall be sold at or above specified retail prices,

(2) any indication by a manufacturer or other supplier of goods of a re-sale price for those goods unless that price is clearly stated to be a maximum price.[81a]

The influence of the nationalization acts on company law, was, it is believed, greater than is commonly realized. Though there is no provision in the Companies Act, 1948,[82] which refers to the nationalization legislation, the new company law grew up in the shadow of nationalization. The Committee on Company Law Amendment, whose chairman was the present Lord Justice Cohen, was appointed

[80] They concern: (1) electrical lamps, (2) insulated electric wires and cables, (3) rain water goods, etc., and miscellaneous builders' goods, (4) dental goods, (5) machinery for manufacture of matches, (6) matches, (7) certain copper and copper alloy goods, and (8) supply of insulin. (Position as on Mar. 28, 1951).

[81] REPORT ON THE SUPPLY OF DENTAL GOODS (H. M. S. O., 1950).

[81a] A STATEMENT ON RESALE PRICE MAINTENANCE PRESENTED BY THE BOARD OF TRADE TO PARLIAMENT. CMD. NO. 8274.

[82] This Act is referred to in the text. The actual reform was carried out by the Companies Act, 1947, 10 & 11 GEO. 6, c. 47, which when later consolidated with the Companies Act, 1929, 19 & 20 GEO. 5, c. 23, into the Act of 1948, 11 & 12 GEO. 6, c. 38, was repealed, with the exception of a few insignificant provisions affecting other enactments. See also: Murphy, *A Revision of British Company Law*, 30 MINN. L. REV. 585 (1946); Note, *British Corporate Law Reform*, 56 YALE L. J. 1383 (1947).

in 1943, when the view was widely held that a limited measure of nationalization was unavoidable. The report of the Committee was published in 1945[83] and was implemented by legislation which was before Parliament between 1946 and 1948 when most nationalization acts were enacted. The Company Law Reform was, in fact, a most effective and successful instrument of reorganization of private enterprise in the face of actual or threatened nationalization.[84] That is, in particular, true of the law of public companies and groups of companies. The provisions dealing with public accountability were greatly extended and the public character of the public company is strongly emphasized. The Act of 1948 requires group accounts for inter-connected companies (§§150-154), the auditor is given a professional standing (§161)[85] and independence of status (§162), the rights of the minority are strengthened (§210), the Board of Trade are given extensive powers of investigation (§§164-175), and even an age limit is introduced for directors (§185)!

In the result, the higher forms of private enterprise, while fully maintaining the vital difference in the matter of ownership, have accepted public control of their corporate life to a degree hitherto unknown. This development is complementary to the tendency of the nationalized industries to emphasize their business character. As the result of that alignment the structural unity of industrial organization in Great Britain has been maintained.

[83] 4 PARLIAMENTARY PAPERS, 1944-1945, pt. 1. CMD. No. 6659.

[84] The future evolution of the joint stock company is discussed in GEORGE GOYDER, THE FUTURE OF PRIVATE ENTERPRISE (1951), and in AUSTEN ALBU, M.P., AND NORMAN HEWETT, THE ANATOMY OF PRIVATE INDUSTRY (1951).

[85] *Cf.* the dissenting opinion of Denning, L. J., in Candler v. Crane Christmas & Co., [1951] 1 All E.R. 426, 428.

THE LEGAL STATUS AND ORGANIZATION OF THE PUBLIC CORPORATION

W. FRIEDMANN*

I

The public corporation has, since the end of the first world war, become a familiar device for the organization of public enterprises and services in many different countries and legal systems.

Both its value and its elasticity can be gauged from the fact that it has been adopted in the socialist and entirely state-controlled economic system of Soviet Russia as well as in the non-socialist system of the United States.

The Soviet Union proceeded, only a few years after the revolution, to develop the institution of the state trusts[1] for the running of major industrial state enterprises. These trusts are constituted as autonomous legal units; they receive their charter from the Supreme Council of National Economy, which also appoints the members of the board; they have two types of capital assets which roughly correspond to the distinction between fixed and floating assets of British company law. The fixed assets belong to the state, the floating assets belong to the trusts—that is to say, they are state property at one remove and can be freely disposed of. The trusts enter into contractual and other legal transactions, and legal disputes between them are settled by special courts which have developed principles of mixed contract and administrative law.[2]

In Germany the public corporation appears in two forms. One makes the state or other public authorities a shareholder in a company; the undertaking is organized in the form of a joint stock company and governed by company law, with the state or other public authorities holding a controlling or substantial interest as shareholder.[3] A more genuine form of public corporation was devised when the Dawes Plan constituted the German State Railways as an independent commercial company, under a control board with Allied participation, charged with reparation obligations and separated from the state budget.

By far the most highly developed and instructive type of public corporation for the British lawyer is the Tennessee Valley Authority (T.V.A.), an outstanding example of public enterprise in a non-socialist economy.

As the illustrations given in this paper will show, the public corporation has achieved particular significance in Britain as well as the British Dominions. A

* Professor of Law, University of Toronto, Toronto, Ontario.

[1] The first decree was of April 10, 1923.

[2] *Cf.* RUDOLF SCHLESINGER, SOVIET LEGAL THEORY 137-139, 247 (1945). HAROLD J. BERMAN, JUSTICE IN RUSSIA: AN INTERPRETATION OF SOVIET LAW 60-78 (1950).

[3] This is known as "mixed public enterprise" (*Gemischt-Wirtschaftliche Unternehmung*).

multitude of enterprises of all kinds are organized in this form: from the British Broadcasting Corporation to the National Coal Board, and the other recently nationalized basic industries; from the Regional Hospital Boards and Management Committees administering the National Health Service, to the Australian Forest and Housing Commissions; from the Trans-Australian Airlines, operating in competition with private air services, to the Canadian Power Commissions and the Canadian National Railways; from the British Development Corporations set up under the New Towns Act, 1946, to the Australian Repatriation Commission, in charge of the civilian rehabilitation of ex-servicemen. It appears that in Britain and the British Dominions, which, despite many differences and changes of government, broadly concur in the blending of an extensive social service state with the preservation of a large degree of private enterprise, the public corporation is regarded as the best way in which to combine the principles of public service and ownership with those of managerial responsibility and financial accountability.

Lastly, the legal form of the public corporation has been adopted by the constitutions of the many functional international agencies created in conjunction with the United Nations Organization. Such institutions as the Food and Agriculture Organization, the World Health Organization, U. N. E. S. C. O., the International Monetary Fund, and others may conveniently be termed international public corporations.[4] Their constitutions and functions naturally differ somewhat from those of the national corporations, as they are institutions of international law. They share with the national public corporations, however, the essential characteristics of a separate legal personality, and relative autonomy of management (represented by the director-general and his permanent staff), coupled with responsibility to a political body (the delegates of the member nations), and financial accountability.

II

DEFINITION AND GENERAL CHARACTERISTICS OF PUBLIC CORPORATIONS

A. General Characteristics

While the idea of an autonomous corporation, responsible not to private shareholders but to public authority, has thus commended itself to the most diverse legal and social systems, the structure and characteristics of the public corporation are inevitably determined by the difference in the legal and constitutional systems in which they are established. The objective is given in President Roosevelt's classic summary in his message to Congress in 1933 recommending the formation of the T.V.A.:[4a]

> . . . a corporation clothed with the power of government but possessed of the flexibility and initiative of a private enterprise.

But there are vast differences between the Soviet state trust which is under the all-

[4] Friedmann, *International Public Corporations*, 6 MOD. L. REV. 185 (1943); Schmitthoff, *The International Corporation*, 30 TRANSACTIONS OF THE GROTIUS SOCIETY FOR THE YEAR 1944 165 (1945).

[4a] H. R. Doc. No. 15, 73d Cong., 1st Sess. (1933); 77 CONG. REC. 1423 (1933).

pervading economic and political control of the Soviet government, in a completely socialized system, the T.V.A., whose responsibility towards Congress and the President respectively reflects the American system of division of powers, and the British public corporation which, after some experimenting, now reflects the British system of indirect responsibilty to Parliament, through the government.

Even within the British legal system, the public corporation stands for a variety of functions and purposes.[5] The first task is as clear a definition of its nature and characteristics as is possible.

From other public authorities such as borough councils or other local government authorities, or from the Crown itself, the public corporation is distinguished by its functional character. However widely defined its objectives (and such public corporations as the National Coal Board or the British Transport Commission do exercise vast functions and many powers), it is not a multi-purpose authority but a functional organization, created for a specific purpose: the provision of transport or broadcasting services, the management of hospital and health services, the development of colonial resources, the administration of compensation for the nationalization of development rights in land, the provision of houses for certain sections of the population, or the import and sale of raw cotton. The nature of these services thus varies widely, from commercial and trading to cultural and supervisory administrative activities, as well as the provision of social services. As will be shown later, the nature of the services performed is not without importance for the legal status of the corporation. It is, however, possible to outline certain universal legal characteristics of the public corporation, applicable to all types:

(1) The public corporation has no shares and no shareholders, either private or public. Its shareholder, in a symbolic sense, is the nation represented through government and Parliament.

(2) The responsibility of the public corporation is to the government, represented by the competent minister, and through the minister to Parliament.

(3) The administration of the public corporation is entirely in the hands of a board which is appointed by the competent minister, sometimes after and mostly

[5] The following major statutes establishing public corporations are repeatedly referred to in the text:
Agriculture Act, 1947, 10 & 11 GEO. 6, c. 48.
Air Corporations Act, 1949, 12, 13 & 14 GEO. 6, c. 91.
Coal Industry Nationalisation Act, 1946, 9 & 10 GEO. 6, c. 59.
Coal Industry Act, 1949, 12 & 13 GEO. 6, c. 53.
Electricity Act, 1947, 10 & 11 GEO. 6, c. 54.
Gas Act, 1948, 11 & 12 GEO. 6, c. 67.
Iron and Steel Act, 1949, 12 & 13 GEO. 6, c. 72.
National Health Service Act, 1946, 9 & 10 GEO. 6, c. 81.
New Towns Act, 1946, 9 & 10 GEO. 6, c. 68.
Overseas Resources Development Act, 1948, 11 & 12 GEO. 6, c. 15.
Town and Country Planning Act, 1947, 10 & 11 GEO. 6, c. 53.
Transport Act, 1947, 10 & 11 GEO. 6, c. 49.

without consultation with any special group or industry but invariably not on a basis of representation of specific interests.[6]

4. Where a public corporation needs capital—those of an essentially administrative character do not—it is provided, in the case of public corporations administering nationalized industries, through assets taken over from private ownership and capitalized through the issue of interest-bearing stock.

Such stock is either government stock or, in most cases, stock issued by the public corporation with a Treasury guarantee. The financial assets of public corporations which have not acquired the assets of formerly private industries (such as the Airways Corporations) consist of corporation stock with a Treasury guarantee, supplemented by the power of the minister to give certain Exchequer grants during the formative period. The industrial public corporations have furthermore the power to borrow money, with the consent of their supervising minister and the Treasury, within limits fixed by the acts.

(5) The public corporation has the legal status of a corporate body with independent legal personality.

(6) All public corporations are supervised by commercial accounting and auditing as well as some form of public control. But the type of accounting and public control varies according to the type of public corporation.

(7) All public corporations have a dual nature: they are instruments of national policy but they are autonomous units, with legal independence and certain aspects of commercial undertakings. The degree of independence varies, however, according to the type and purpose of the public corporation.

B. Three Types of Public Corporation

The nationalization of British industries has brought into prominence the industrial or commercial type of public enterprise. It now looms large, with such giant enterprises as the National Coal Board, the Transportation Commission, the British Electricity Authority, the Iron and Steel Board, the Gas Council, the Airways Corporations, the Colonial Development Corporation, and the Overseas Food Corporation. This type of public corporation, which may be described as the *commercial corporation,* is designed to run an industry or public utility, according to economic and commercial principles but subject to public responsibility to the appropriate constitutional authorities. There is, secondly, what we may term the *social service corporation.*[7] This type of corporation is designed to carry out a par-

[6] The Board of the Port of London Authority consists of representatives of the directly interested industries. The Board of the former London Passenger Transport Board was appointed by trustees. While the former method can be justified for the particular case of a port authority, the latter method has been criticized by both GORDON, PUBLIC CORPORATIONS (1937), and ROBSON (ED.), PUBLIC ENTERPRISE (1937), as removing the board from proper public control. This method of "appointing trustees" has now been abandoned.

[7] This terminology suggested in my paper, *The New Public Corporations and the Law,* 10 MOD. L. REV. 233, 377 (1947), has been accepted by Professor Glanville Williams in CROWN PROCEEDINGS 28 (1948). The term "commercial public corporation" is also used by the Court of Appeal in Tamlin v. Hannaford, [1950] 1 K.B. 18 (C.A.) (Denning, L.J.).

ticular social service on behalf of the government. It is represented by such enterprises as New Town Development Corporations, Regional Hospital Boards and Management Committees, the Central Land Board, and the Agricultural Land Commission. These and similar public corporations also have to undertake numerous commercial and managerial functions. They have to employ staff, buy equipment, manage large institutions. But their essential purpose is that of undertaking a social service on behalf of a government department. They enjoy therefore a smaller degree of independence from managerial supervision than commercial corporations. For example, the Agricultural Land Commission manages and farms land vested in the minister and placed by him under the control of the Commission. It also carries out such other functions as may be entrusted to the Commission by the Act. The Central Land Board, it is specifically provided, exercises it functions "on behalf of the Crown."[8] Because the Regional Hospital Boards are described as carrying out their functions "on behalf of the minister," it is provided that this shall not affect their legal liability.[9] The difference between these two types of corporations is reflected in the provisions regarding accountability. After some considerable discussion, it was decided that the commercial corporations would have their accounts audited according to commercial standards and by commercial auditors, but not by the Auditor-General. Such social service corporations as Town Development Corporations and Regional Hospital Boards, on the other hand, must submit their accounts to the minister, who has them audited by the Comptroller and Auditor-General. This indicates a difference in the legal status and constitutional position of the two types of corporation.

It is, however, useful to add a third though less frequent type of public corporation. This may be termed the *supervisory public corporation*. It has essentially administrative and supervisory functions, and it does not engage in commercial transactions, either to fulfil its main objective, or incidentally to the performance of a social service. A good example of this type of corporation within the British legal orbit is the Australian Broadcasting Control Board, created by a statute of 1948. It is established as a corporate body on the usual lines. Its main function is the supervision of both technical and cultural standards of broadcasting services (broadcasting in Australia is shared between a Commonwealth-owned public corporation and a number of commercial stations). This Board has certain powers of direction, including the power to grant loans for certain purposes, with the consent of the Treasury, but it does not itself undertake any commercial operations. The main reason for giving such institutions separate legal status rather than that of a government department, is the greater degree of managerial autonomy, and independence from civil service regulations.

[8] Town and Country Planning Act, 1947, §3(3).
[9] National Health Service Act, 1946, §13.

C. Constitution of Boards

In all cases the boards are appointed by the competent minister, who is not tied by any consideration of representative interests in his choice. Appointments have in fact been made throughout on an independent, non-party, and non-political basis, though the different members naturally represent various walks of life and experience.[10] The relevant clause in the Coal Industry Nationalisation Act, 1946, is typical:[11]

> The Board shall consist of a chairman and not less than eight, nor more than eleven other members. The chairman and other members of the board shall be appointed by the Minister of Fuel and Power . . . from amongst persons appearing to him to be qualified as having had experience of, and have shown capacity in, industrial, commercial or financial matters, applied science, administration, or the organisation of workers.

While in some cases the qualifications of the persons whom the minister should appoint are specified, he is left complete discretion in others.[12] Some acts specify groups or authorities which the minister has to consult before appointment.[13]

The minister is usually given power to make regulations with respect to the tenure of office of the board. A standard practice is undoubtedly developing in this field.[14] Neither the members of the board nor the staff of the public corporation are civil servants. The appointment is for a definite term and upon conditions as determined by the minister with the approval of the Treasury. Members of the boards may resign or be dismissed by the minister, in cases specified in the regulations. Apart from membership of Parliament, which is incompatible, the main grounds upon which the minister may "declare the office to be vacant" are the member's engagement in any trade or business including a directorship of a company, or a position as officer or servant in an organization of workpeople. But there is also a general power of dismissal in the case of continued neglect of duty (such as absence from meetings of the board for more than six months consecutively and unfitness to continue in office or incapability of performing duties). In all these respects the discretion lies with the minister, who is given power to approve exceptions, for example in regard to membership in a company or a workmen's organization. A necessary and wholesome provision in the regulations is the obligation laid upon every member of the board to disclose to the minister full particulars of any interest held

[10] In the National Coal Board, for example, the various members have been chosen with regard to their technical knowledge of the coal industry, administrative experience, trade union and labor management experience, etc.

[11] Sec. 2, Coal Industry Nationalisation Act, 1946, in conjunction with §1, Coal Industry Act, 1949. Similar clauses are found in: New Towns Act, 1946, §2; National Health Service Act, 1946, Third Schedule; Electricity Act, 1947, §3; Transport Act, 1947, §1; Town and Country Planning Act, 1947, §2; Gas Act, 1948, §1; Iron and Steel Act, 1949, §1.

[12] *E.g.*, in the appointment of the National Assistance Board (National Assistance Act, 1948, 11 & 12 GEO. 6, c. 29, First Schedule). Its members are appointed by His Majesty by warrant under the Sign Manual.

[13] *E.g.*, the university, the medical profession organization, and the local health authorities are to be consulted in the appointment of members of the Regional Hospital Boards. *Cf.* Third Schedule to National Health Service Act, 1946.

[14] *Cf.* for example, S.R. & O. 1946, No. 1094, regulating appointments to the National Coal Board, in pursuance of §2 of the Coal Industry Nationalisation Act, 1946.

either directly or indirectly in any business similar to that carried on by the board. This includes interests in board contracts and membership in any firm interested in such contracts. It has been customary to provide for "staggered" appointments so that terms of office of the different members of the board shall not expire simultaneously, to the detriment of the continuity of administration.

Decentralization of management and legal responsibilities is a general problem of all the public corporations, which administer the basic national industries. But whereas in most cases, for example that of the National Coal Board, it has been left to the board to organize its own decentralization, the Gas and Electricity Acts provide for Area Boards. The Area Gas Boards, for example, are responsible for the gas supply in specified areas, and for that purpose have a number of ancillary powers, including the manufacture and distribution of gas and certain ancillary products. On a more limited scale, the powers of the Area Boards are parallel to those of the wider national corporation. They are, however, generally responsible to the latter, in a way roughly comparable to the responsibility of the national corporations to their respective ministers.[15]

D. Advisory Councils

The public corporation is not under the control of a shareholders' meeting. Theoretical though the control of shareholders is today in the case of most companies, the link established between the public corporations and Parliament, through the competent minister, does not create sufficient contact between the public corporation and the public. A series of advisory councils or committees have been constituted for the specific purpose of giving independent advice to the minister on behalf of the public in general, or of such groups of the public as are particularly interested in the enterprise concerned. Although the type and composition of these advisory councils varies according to the nature of the industry or enterprise concerned, a general pattern can be discerned. The advisory councils are appointed by the minister "as the minister may think fit," or "as the minister may from time to time determine."[16] But the minister is directed in the acts to consult with certain organizations before he makes the appointments.[17] Thus, in the case of the coal industry, an Industrial Coal Consumers' Council and a Domestic Coal Consumers' Council have been established. The minister is to consult on the appointments

> with such bodies representative of the interests concerned as the Minister thinks fit

and he

> shall have particular regard to nominations made to him by the said bodies representative of the interests concerned of persons recommended by them as having both adequate

[15] *Cf.* for example, Gas Act, 1948, §2(iv), §4(ii).

[16] This seems an example of needless diversity in terminology.

[17] See §4, Coal Industry Nationalisation Act, 1946; §6, Transport Act, 1947; §6, Iron and Steel Act, 1949.

knowledge of the requirements of those interests and also qualifications for exercising a wide and impartial judgment on the matters to be dealt with by the council generally.

The Iron and Steel Act provides for a single Iron and Steel Consumers' Council, consisting of an independent chairman and from fifteen to thirty other members appointed by the minister, after consultation with representative bodies. The Gas and Electricity Acts, in conformity with the policy of decentralization, establish a number of consultative committees, one for each Area Board.

It is the function of these advisory councils to advise and report to the minister on the matters on which they are competent. They are to make annual reports to the minister, who shall lay them before Parliament. The members of the councils are not full-time officials or employees. But provision is made for full-time staffs, whose remunerations are determined by the minister with the approval of the Treasury. There are some strange and apparently unnecessary inconsistencies in the constitution of the different committees.

Thus, the Coal Act lays down that the two Consumers' Councils shall consist of persons appointed by the minister "to represent the board." A similar provision does not exist in the case of the three Transport Users' Consultative Committees. The function of these committees, which is to represent the section of the consuming public concerned (including industry) in a position of independence of the board, and with full power to criticize it, seems incompatible with their representing the board. On the other hand, the Transport Act does provide that the full-time officers and servants of the consultative committees are to be provided by the Transport Commission itself (Section 7(7)). The Coal Industry Nationalisation Act, by contrast, provides that clerks, officers, and staff are to be furnished by the minister, with the concurrence of the Treasury. This is both more logical and more sensible if the consumers' councils are to have a position of independence towards the boards.

How far the advisory councils are in practice fulfilling the function of independent consumers' representatives, is a matter of some doubt. A recent report in *The Economist*[18] asserts that the Coal Consumers' Councils—which have so far issued three annual reports—tend too much to regard themselves as part of the organization, and to whitewash the boards which it should be their duty to criticize if necessary. The danger of subservience, or at least lack of sufficient independence, is obviously greater where the officers and staff of the councils are supplied by the corporation. This is so with the Coal Councils, but not with the Iron and Steel Consumers' Council, or the consultative Council set up in the Electricity Act, for each Area Board. The latter are far closer to local opinion; but the chairman of the area council is also an ex-officio member of the area board. Suggestions have recently been made in Parliament that the advisory and consultative councils should be made more independent of the boards, by a complete separation of both finance and personnel.

[18] The Economist, Aug. 5, 1950, pp. 276-278.

An altogether different institution is the Air Transport Advisory Council,[19] which is constituted in the form of a tribunal with a legally qualified chairman and has the function of considering representations from any person

> with respect to the adequacy of the facilities provided by any of the Airways Corporations, or with respect to the charges for any such facilities. . . .

The council has a wide discretion in rejecting representations which they consider frivolous, vexatious, or inexpedient.

Despite its semi-judicial composition, the council has only the power to make recommendations to the minister, and it must make an annual report which the minister shall lay before Parliament, together with a statement of any recommendations submitted by him in consequence, or any recommendations submitted to him by the council. It is difficult to see the reason for this fundamental difference between the Air Transport Advisory Council and the other advisory councils. Both are advisory, but both may have to deal with such matters as charges for goods and services. Nor is it apparent why the Air Transport Advisory Council should be constituted in the form of an administrative tribunal.

E. Legal Powers of the Public Corporation

A comparison of the powers clauses in all the relevant acts shows that the legislator has chosen wide and elastic formulas giving the corporations almost unlimited scope and discretion.[20]

The formulations are, however, far from identical. The general pattern is that of setting out the specific tasks of the public corporation in question. This is followed by provisions specifying a number of particular activities which the public corporation shall be empowered to carry out, but without prejudice to the generality of the powers granted in the section as a whole. To this is added a general powers clause of varying formulation. Thus, the Coal Industry Nationalisation Act provides:

> The Board shall have power to do anything and to enter into any transaction . . . which in their opinion is calculated to facilitate the proper discharge of their duties under subsection (i) [which defines the duty of producing and supplying coal] of this section or the carrying on by them of any such activities as aforesaid or is incidental or conducive thereto.

The Electricity Act chooses a slightly different formulation:

> . . . which in their opinion is calculated to facilitate the proper performance of their duties under the foregoing section or the exercise or performance of any of their functions under the foregoing provisions of this section, or is incidental or conducive thereto. . . .

This is followed by a specific restriction on the powers of an area board in regard

[19] Sec. 12, Civil Aviation Act, 1949, 12 & 13 GEO. 6, c. 67.

[20] *E.g.*, §1(3), Coal Industry Nationalisation Act, 1946; §2(5), Electricity Act, 1947; §2, Transport Act, 1947; §3(2), Air Corporations Act, 1949; §2, New Towns Act, 1946; §2, Iron and Steel Act, 1949.

to the manufacture of electrical plant and electrical fittings, which is reserved to the central authority.

The Air Corporation Act has a different and more complex powers clause. It first defines the duty of the Airways Corporations:

> to provide air transport service and to carry out all other forms of aerial work. . . .

It secondly contains a general powers clause in the following form:

> Each of the corporations shall have power, subject as hereinafter provided, to do anything which is calculated to facilitate the discharge of their functions under the preceding subsection or of any other functions conferred or imposed on the corporation by or under this Act, or is incidental or conducive to the discharge of any such functions.

The Act thirdly gives the minister the right to define the previously conferred powers for the purpose of keeping the public properly informed as to the nature and scope of the activities of the public corporation; but it is added that

> nothing in any such order shall prejudice the generality of the powers conferred by the preceding provisions of this section.

The Act fourthly withholds from all three corporations the power to manufacture air frames or aero engines or air screws. The Act fifthly enumerates certain additional powers, again without prejudice to the generality of the powers previously conferred, to acquire auxiliary undertakings. It lastly authorizes the minister to issue an order which limits the powers of any of the three corporations, to such extent as he thinks desirable in the public interest, by making their exercise dependent on a general or special authority given by him. Such order must be laid before Parliament, which may annul it within forty days.

The powers clause of the Development Corporations under the New Towns Act is again different. It firstly defines their objects, and enumerates a number of specific powers, to which is added a general clause in the following form:

> to carry on any business or undertaking in or for the purposes of the new town, and generally to do anything necessay or expedient for the purposes of the new town or for purposes incidental thereto.

The Act then specifically excludes the power to borrow money (other than ministerial advances under the Act) and authorizes the minister to give directions restricting the exercise of any of the powers of the corporation or to give instructions as to the manner of their exercise. But it is further provided:[21]

> . . . any transaction between any person and any such corporation acting in purported exercise of their powers under this Act shall not be void by reason only that it was carried out in contravention of such directions unless that person had actual notice of the directions.

The Transport Act, alone of the laws setting up commercial public corporations, defines the powers of the Transport Commission by way of enumeration, without adding a general and elastic clause of the type mentioned before.

[21] Sec. 2(3)(b), New Towns Act, 1946.

The clauses defining the powers of the non-commercial public corporations are markedly different. Their position is more that of auxiliary organs of the minister in the performance of a social service. Thus, the National Health Service Act provides in Section 11 that Regional Hospital Boards shall be constituted

> . . . for the purpose of exercising functions with respect to the administration of hospital and specialist services in those areas. . . .

Section 68 of the Agriculture Act defines the function of the Agricultural Land Commission as:

> (a) managing and farming land vested in the Minister . . . being land which is placed by him under the control of the Commission; and (b) advising and assisting the Minister in matters relating to the management of agricultural land, and with such other functions as may be entrusted to the Commission by or under the provisions of this Act.

Certain functions, such as the acquisition or the disposal of land except where specifically placed under its control, are excluded from the capacity of the Commission, but a general clause similar to those in the acts regulating the nationalized industries gives the Commission

> . . . power to enter into such transactions and do all such things (whether or not involving the expenditure of money) as in their opinion are expedient for the proper discharge of their functions.

These functions are, however, much more limited and specific than those of the commercial corporation.

The degree of elasticity of the powers conferred upon the corporations, and in particular, the choice between an objective and a subjective formulation of those powers, has a direct bearing upon the question of ultra vires control. The greater the discretion placed in the hands of the governing body of the corporation, the smaller the scope of judicial control.

III

THE LEGAL STATUS OF PUBLIC CORPORATIONS

A. Corporate Character

Substantially similar provisions in all the acts provide for the establishment of the public corporations as "a body corporate . . . with perpetual succession and a common seal and power to hold land without licence in mortmain."[22]

The acts do not state specifically that the public corporations are to be on the same footing as any private legal person in respect to legal duties, liabilities, charges, etc. That they are to be in such a position can, however, be inferred from two typical sets of provisions.[23] One says that

> Nothing in this Act shall be deemed to exempt the Corporation from liability for any tax, duty, rate, levy or other charge whatsoever, whether general or local.

[22] *E.g.*, §2, Coal Industry Nationalisation Act, 1946; §2, New Towns Act, 1946; First Schedule to Transport Act, 1947; Third Schedule to National Health Service Act, 1946.

[23] See, for example, the Iron and Steel Act, 1949, §§9 and 10.

This clause makes it clear that the public corporations do not participate in any privileges or immunities of the Crown. Another typical provision is as follows:

(1) The Public Authorities Protection Act, 1893, and section twenty-one of the Limitation Act, 1939, shall not apply to any action, prosecution or proceeding against the Corporation, or for or in respect of any act, neglect or default done or committed by a servant or agent of the Corporation in his capacity as a servant or agent of theirs.
(2) In their application to any action against the Corporation sections two and three of the Limitation Act, 1939 [which relate to the limitation of actions of contract and tort, and certain other matters] shall have effect with the substitution for references therein to six years of references to three years.

This provision implies that the public corporations are fully liable in law in actions for breach of contract, tort, recovery of property, etc. Their special position, and their duties as public authorities responsible to a minister, are reflected only in the privilege of a shortened limitation period.

The normal commercial public corporation, such as the National Coal Board or the Transport Commission, is politically responsible to the minister and through him to Parliament. But legally, it is in no sense an agent or servant of the minister or the Crown. This is brought out clearly by certain differences in the drafting of the relevant statutes. Some of the social services corporations are specifically assigned their functions "on behalf of" the executive. Thus, the Town and Country Planning Act, 1947, stipulates that "the functions under this Act of the Central Land Board, and of their officers and servants, shall be exercised on behalf of the Crown." The National Assistance Board, which administers assistance to "persons . . . without resources to meet their requirements," in supplementation of the National Insurance Act, 1946, also exercises its functions "on behalf of the Crown."[24] The National Health Service Act, 1946, states in Section 13

(1) A Regional Hospital Board and the Board of Governors of a teaching hospital, shall, notwithstanding that they are exercising functions on behalf of the Minister, and a Hospital Management Committee shall, notwithstanding that they may be exercising functions on behalf of the Regional Hospital Board, be entitled to enforce any rights acquired, and shall be liable in respect of any liabilities incurred (including liabilities in tort), in the exercise of those functions, in all respects as if the Board or Committee were acting as a principal, and all proceedings for the enforcement of such rights or liabilities, shall be brought by or against the Board or Committee in their own name.
(2) A Regional Hospital Board, Board of Governors or Hospital Management Committee shall not be entitled to claim in any proceedings any privilege of the Crown in respect of the discovery or production of documents, but this subsection shall be without prejudice to any right of the Crown to withhold or procure the withholding from production of any document on the ground that its disclosure would be contrary to the public interest.

The precise legal effect of such provisions is not easy to ascertain. It is possible that the Central Land Board is meant to participate in the privileges and immunities of the Crown, in regard to statutes, taxes, and other rights and liabilities. The Re-

[24] National Assistance Act, 1948, First Schedule, §9.

gional Hospital Boards and Management Committees might be in the same position, except for the specific provision of the National Health Service Act, 1946. The Australian courts, which are still greatly preoccupied with the problem of the "shield of the Crown,"[25] would probably so hold. The English Court of Appeal, in *Tamlin v. Hannaford*,[26] leaves it at least open whether it would have come to a different decision in the case of the Central Land Board. But it is equally possible that the Court would separate the question of legal liabilities from that of constitutional responsibilities. The public corporations exercising their functions "on behalf of" the Crown are on the ministerial budget, and subject to a far closer degree of ministerial supervision and responsibility. This also means greater latitude for questions in Parliament.

No corresponding provisions exist in regard to any of the commercial corporations. In the only English decision so far on this matter, the Court of Appeal in *Tamlin v. Hannaford* rightly deduced from this difference in drafting, that the British Transport Commission—and this applies to all the nationalized industries—was not a servant or agent of the Crown, and could not therefore be held to participate in the Crown privilege of immunity from the Rent Restriction Acts. The Court reinforced its argument by a consideration of the general structure of the public corporations, whose characteristic feature is legal automony coupled with political responsibility.

B. The Shield of the Crown

In short, in the *Tamlin* case the Court of Appeal gave the only interpretation consistent with the true purpose and function of public corporations in the modern legal and economic system of Great Britain. It specifically acknowledged that public corporations are public authorities, but separated this question from that of their legal relation to Crown and Parliament. It acknowledged the dual character of this new form of public authority:[27]

> In the eye of the law, the corporation is its own master and is answerable as fully as any other person or corporation. It is not the Crown and has none of the immunities or privileges of the Crown. Its servants are not civil servants, and its property is not Crown property. It is as much bound by Acts of Parliament as any other subject of the King. It is, of course, a public authority and its purposes, no doubt, are public purposes, but it is not a government department nor do its powers fall within the province of government.

The problem of the so-called "shield of the Crown" is no longer of much significance in English law. It is true that its importance has been greatly reduced by the Crown Proceedings Act, 1947,[27a] which makes the Crown itself fully liable in civil proceedings. There remain, however, a number of Crown privileges, of which the most important are immunity from taxes and rates, and in particular, immunity from the binding effect of statutes, unless they are by specific or necessary applica-

[25] *Cf. infra*, p. 589.
[26] [1950] 1 K.B. 18 (C.A. 1949).
[27] Per Denning L. J., *id.* at 24; [1949] 2 All E.R. 327, 329 (C.A.).
[27a] 10 & 11 GEO. 6, c. 44.

tion applied to the Crown.[28] It is now clear, partly from express statutory provisions, and partly from the interpretations of their status and character as given in *Tamlin v. Hannaford,* that the commercial corporations at least will not participate in any remaining Crown privileges.

Unfortunately, however, this problem is still a matter of great importance in Australia, which has a multitude of public corporations but none of the unifying legislation which has clarified the status of the modern British public corporations. It is precisely because the dual status of the modern public corporation, its Janus head as a public authority and a legal person of private law, has not been sufficiently appreciated in the Australian courts, that the judicial authorities on this subject are in a state of great confusion.

The whole problem can be traced back to some English decisions of the late nineteenth century. In the *Mersey Docks and Harbour Board Trustees v. Gibbs,*[29] one of the earliest public authorities, a public harbor authority was held liable for negligence. Blackburn, J., observed as follows:

> It is well observed . . . of corporations like the present, formed for trading and other profitable purposes, that though such corporations may act without reward to themselves, yet in their very nature they are substitutions, on a large scale, for individual enterprise. And we think that, in the absence of anything in the statutes (which create such corporations) showing a contrary intention in the Legislature, the true rule of construction is, that the Legislature intended that the liability of corporations thus substituted for individuals should, to the extent of their corporate funds, be co-extensive with that imposed by the general law on the owners of similar works.

Some years later, the House of Lords held, on the other hand, that land owned by the justices of the county of Berkshire, used for the building of a court of assizes, was exempt from rates and taxes, because the administration of justice was "a proper and inalienable" government function.[30] From these cases, a rule gradually emerged that the status of a particular public authority depended on its purpose and function. If it exercised a proper government function, it was within the shield of the Crown and shared its privileges; if not, it was outside the shield.

The fallacy and impracticability of such a test should be apparent. Without the adoption of a radical *laissez faire* philosophy, and the definition of state functions, as they were current in the days of Adam Smith or Herbert Spencer, it is utterly impossible to sort out proper from improper government functions. A moment's thought on the implications of modern defence, government control over industrial research, education or broadcasting, quite apart from direct industrial enterprise, should show the futility of this distinction. At a time when every common law country, the United States as well as Great Britain and the British Dominions, owns

[28] For a fuller discussion, see Friedmann, *Public Welfare Offences, Statutory Duties, and the Legal Status of the Crown,* 13 MOD. L. REV. 24 (1950).

[29] 11 H. L. Cas. 686, 707, 11 Eng. Rep. 1500, 1508-1509 (H. L. 1866).

[30] Coomber v. Justices of the County of Berks, 9 App. Cas. 61 (1883).

and operates a multitude of public enterprises from the Tennessee Valley Authority to the Trans-Australian Airways or the National Coal Board, it is obviously impossible for the lawyer to lay down an entirely different definition of state functions. The work of such men as Gény, Heck, and others on the Continent, of Dicey in England, of Holmes, Cardozo, Pound, and others in the United States, has shown that the courts must follow the main evolutions of public opinion in their interpretation of general legal problems. As Mr. Justice Holmes observed, the constitution does not enact Herbert Spencer's Social Statics. This applies equally to the definition of state functions for legal purposes. Such an approach has now been accepted by the United States Supreme Court, in the *Saratoga Springs* case.[31]

In this case the issue was whether the State of New York was liable to the federal tax on mineral waters on the sale of mineral waters from its state-owned and operated Saratoga Springs. Majority and minority judgments, in particular those of Frankfurter and of Douglas, agree on the uselessness of the former test, as laid down by Sutherland in *Ohio v. Helvering*,[32] that liability to taxation depended on the distinction between the State as government and the State as trader. In the words of Douglas,[33]

> A State's project is as much a legitimate governmental activity whether it is traditional, or akin to private enterprise, or conducted for profit. . . . What might have been viewed in an earlier day as an improvident or even dangerous extension of state activities may today be deemed indispensable.

At present many functions are exercised by public authority which are not a substitute for private enterprise but the outcome of new conceptions of social responsibility. If Railway Commissioners or the National Coal Board may be regarded as a substitute for privately owned railways, the Forest Commissioners cannot. Their functions are not confined to the purchase or sale of timber but they comprise what Roscoe Pound has described as one of the vital social interests protected by modern law: the conservation of social resources. A Housing Commission exercises many of the functions of a private builder, but it also discharges a social responsibility of the state and is bound to give priority to social policy considerations. Again, the Development Corporations established in the British New Towns Act, 1946, exercise many commercial functions. They acquire and dispose of land, they control building and personnel, they enter into a multitude of contracts. But their essential function is one which cannot be regarded as a substitution for private enterprise: the coordinated development of planned townships under a general national plan of re-distribution and re-development. Commercial and non-commercial aspects are as inextricably mixed as public and private law.

Australian Courts have been well aware of the difficulties in defining the proper functions of government. In order to determine the status of a public corporation,

[31] New York v. United States, 326 U. S. 572 (1945).
[32] 292 U. S. 360, 366 (1934).
[33] New York v. United States, *supra* note 31, at 591.

they have therefore increasingly relied on a number of subsidiary technical tests.

Chief Justice Latham, in his survey of the problem in the *Grain Elevators Board* case,[34] enumerates the essential factors: Firstly, incorporation; secondly, financial autonomy; thirdly, the amount of independent discretion given to the public authority towards the government and the public; fourthly, the right of appointment of the members of the authority by the Crown; lastly, the question whether the authority fulfills a governmental or a non-governmental function.

There is also fairly universal agreement that none of these tests singly gives a conclusive answer. It all depends on the words and the implied intention of the statute, on the respective weight of any one or several of the above-mentioned tests, and last but not least on the somewhat "chancey" ideas of the court on the nature of government functions.

The extreme difficulty of deriving any satisfactory and consistent practical conclusions from these tests may be illustrated by a few examples: the New South Wales Forest Commission is liable in tort,[35] but the Victorian Forest Commission is not.[36] The Victorian Railways Commissioners were given the priorities of the Crown for claims arising out of the sale of coal from a coal mine vested in them.[37]

More recently, the Victorian Supreme Court held the Victorian Railway Commissioners not bound by the sectional regulations regarding landlord and tenant,[38] but this decision was subsequently overruled by the Full Supreme Court,[39] which held that the Commissioners might be an instrumentality of the Crown for some purposes, but not in their capacity as landlords. On the other hand, the New South Wales Housing Commission was held not to be bound by the building regulations of a Local Government Act.[40] The Commonwealth Repatriation Commission, which among other activities makes business loans to exservicemen, was held entitled to the Crown priorities in seizing assets for the satisfaction of its claims.[41] In an earlier decision, however, the Sydney Harbor Trust Commissioners were held bound by the Employers Liability Act.[42] More recently, the High Court of Australia—the highest court of the country—held that land vested in the Grain Elevators Board of Victoria (which stores and sells grain) was not "land the property of His Majesty." The reasoning of the Court and in particular the judgment of Dixon, J., was close to that later adopted by the English Court of Appeal in *Tamlin v. Hannaford;* the public functions of the Board were separated from its legal liabilities. In the *Grain Elevators Board* case,[43] Dixon, J., said:

[34] Grain Elevators Board (Vict.) v. Shire of Dunmunkle, 73 C. L. R. 70 (1946).
[35] *Ex parte* Graham; *Re* Forestry Commission, 45 S. R. (N. S. W.) 379 (1945).
[36] Marks v. Forest Commission, [1936] Vict. L. R. 344.
[37] *In re* Oriental Holdings Pty. Ltd., [1931] Vict. L. R. 279.
[38] Victorian Railways Commissioners v. Greelish, [1947] Vict. L. R. 425.
[39] Victorian Railways Commissioners v. Herbert, [1950] Vict. L. R. 211.
[40] North Sydney Municipal Council v. Housing Commission of New South Wales, 48 S. R. (N. S. W.) 282 (1948).
[41] The Repatriation Commission v. Kirkland, 32 C. L. R. 1 (1923).
[42] The Sydney Harbour Trust Commissioners v. Ryan, 13 C. L. R. 358 (1911).
[43] Grain Elevators Board (Vict.) v. Shire of Dunmunkle, *supra* note 34, at 85.

It is probably correct to say . . . that it conducts what is just as much a governmental undertaking as the State railways and that it falls within the Department of the Minister of Agriculture of the State of Victoria. . . .

But that appears insufficient to overcome the plain intention of the legislation that, like the Victorian Railways Commissioners, the State Savings Bank Commissioners, the State Electricity Commission, and many other statutory governmental bodies, the Grain Elevators Board should be an independent corporation owning its own property legally and beneficially and acquiring its own rights and incurring its own obligations.

The most recent decision on this subject, however,[44] though of less authority than that of the High Court, held the Electricity Trust of South Australia to be immune from the South Australian rent restriction legislation, partly on general grounds, and partly because of the statutory provision under which the Trust "shall hold all its assets for and on account of the Crown."

This truly disturbing confusion of authorities is a matter of considerable practical as well as theoretical importance. As the scope of the public enterprise grows, such matters as immunity from local rates, or immunity from rent restriction legislation, affect a growing proportion of public life. The finance of local authorities, which depends on rates, is upset: the citizen who can be evicted because his house is owned by Railway Commissioners or a public Electricity Trust, cannot but have a strong feeling of injustice and resentment. The absence of any consistency in the judicature is due mainly to two factors: first, failure to recognize the dual character of public corporations, which is incompatible with the tests usually applied; second, the absence of a clear and simple principle of legal policy.

As regards the test of financial autonomy, used by the Australian Courts, the position of the public corporations varies considerably, but none is entirely autonomous. Most have their own capital, some issue government stock, but all carry a Treasury guarantee, and in many cases, the Exchequer may make grants or advances for specific purposes.[45] The commercial public corporations have their separate budgets, and profit and loss accounts. They are expected to make good their own deficits, and apply their profits to the enterprise, but to the extent that they have received grants from public funds, they must of course make repayments into the Consolidated Fund. All the accounts of public corporations must be laid before Parliament and can be criticized. Some of the social services corporations, such as the Regional Hospital Boards, are carried on the department budget, but, as we have seen, this does not affect their legal liability in private actions as well as for public charges.[46]

The same duality of position is apparent in the method of appointment and the degree of autonomy of management. As stated earlier, the normal method of appointment is by the minister, or, in the Dominions, by the Governor-General, or

[44] Electricity Trust of South Australia v. Linterns Ltd., [1950] Argus L. R. 551.

[45] *E.g.*, Air Corporations Act, 1949, §§13-16; Victorian Railways Act, 1928, §103; Electricity Trust of South Australia Act, §19.

[46] National Health Service Act, 1946, §13.

the Governor-in-Council. This provides an obvious and deliberate link with the executive which is reinforced by the general power to give directions to the boards in matters affecting the national interest. But, in the general conduct of business, there is far-reaching autonomy of management. Reluctance to restrict it has been the main justification for the British Government's refusal to have the accounts of the commercial public corporations audited by the Comptroller and Auditor-General, as well as by commercial auditors, and for the refusal of ministers to answer questions on details of management in Parliament.[47] There is no contradiction between the principle of the widest possible autonomy of management, and the right of the nation, represented by Cabinet and Parliament, to call the corporations to account on matters of general public policy or the misuse of public money. Equally, security of tenure goes far, but is not absolute.

IV

The problem just discussed demonstrates the necessity for a clearer appreciation of the many new public law problems which confront the courts as well as others concerned with the application and development of the law. Precedents are either so scarce or so conflicting that the courts have a relatively free hand in helping in the evolution of the law. Nor is there, in this case, a conflict of legal policies between which the courts might find it difficult to choose. Advocates and opponents of public enterprise are agreed on the necessity to subject it to legal liability and commercial accountability. The public corporation is an institution deliberately designed to integrate public enterprise with the existing common law system. The courts can help this purpose by a full appreciation and application of the principles governing the public corporation. They can hinder it by applying nineteenth century ideas to twentieth century problems.

[47] *Cf.* the debate in the House of Commons, Mar. 3, 1948, 448 H. C. DEB. 391-455 (5th ser. 1948).

SOME LEGAL ASPECTS OF COMPENSATION FOR NATIONALIZED ASSETS

MARY BELL CAIRNS*

I

It may seem axiomatic to an English lawyer to say that any expropriation of property by the state must inevitably give rise to the question of compensation for those persons whose assets and interests have been affected, because the principle of compensation for assets compulsorily transferred from private to public ownership has long been established in English law. To most continental lawyers,[1] however, such a principle is unrecognized, while to others, such as those of the United States of America, it is in practice, if not in theory, almost unknown since nationalization of industry is a tenet which has but little practical influence in that country.[2]

The subject of compensation for assets which have been compulsorily acquired by the state[3] is a matter of great practical importance in England at the present time on account of the nationalization of different types of industry in recent years. To onlookers in other countries, it is also a matter of some interest, not only because of the basic principle of compensation itself, but also on account of the terms of the compensation, the methods of its assessment, and its value as compared with that of the transferred assets.

Before considering the details of the compensation awarded to the owners of those industries which have recently been compulsorily acquired by the state, some general observations must first be made upon the legal rules which underlie the principle of compensation for the expropriation of property as it is applied in

* LL.B. 1937, LL.M. 1947, University of Bristol; Ph.D. (Faculty of Law) 1950, London School of Economics and Political Science, University of London; of the Middle Temple and Western Circuit, Barrister-at-Law; a member of the Bristol City Council, 1941-1944.

[1] See the cases cited in C. M. SCHMITTHOFF, A TEXTBOOK OF THE ENGLISH CONFLICT OF LAWS (2d ed. 1948), at 55, 56, *e.g.*, a decree of confiscation of June, 1918, by the Soviet Government gave no right of compensation to those persons whose property was expropriated: Luther v. Sagor, [1921] 3 K. B. 532; a similar decree of the Spanish Government requisitioning ships registered in Bilboa: Campania Naviera Vascongado v. S. S. Cristina, [1938] A. C. 485; the Government of the Republic of Spain v. S. S. Arantzazu Mendi, [1939] A. C. 256.

In Italy, on the other hand, the recent measure for partial land reform which provides for the expropriation and assignment to peasant proprietors of some 1,750,000 acres of land, contains provisions for compensation to owners based upon the taxable value of the expropriated land, a quarter of which is paid in cash, the remainder being payable in 25 year Treasury bonds.

[2] "Instead of owning its railroads, radio systems, or telegraph and telephone lines, the United States has preferred to maintain private management with government regulation. . . . While there is some sentiment in the United States for public ownership of these properties, the bulk of the opinion seems to favour private status." HAROLD H. ZINK, GOVERNMENT AND POLITICS IN THE UNITED STATES 642 (1947).

Examples of public ownership in the United States are the Tennessee Valley Authority, the Post Office, and the United States Maritime Commission.

[3] The expression "state" is used throughout this essay because these nationalized industries were assigned to autonomous boards and are not operated by government departments on behalf of the Crown; see, for example, Tamlin v. Hannaford, [1950] 1 K. B. 18 (C. A. 1949).

England today. There are two basic rules of English law which relate to this matter. In the first place, the compensation payable for the expropriated property, just like the expropriation itself of the property, must be authorized by Parliament. Secondly, when property is compulsorily acquired, the courts of law apply, in interpreting the statute which authorizes the expropriation of property, the canon of construction that express words are needed to authorize its taking without compensation.

With regard to the first principle, since in England the state, just like a private individual, does not possess any inherent powers of expropriating property, except by virtue of the Royal prerogative[4] in time of war, it must seek special powers authorizing it to do so. Therefore, whenever it is the policy of any particular Government that property owned by private individuals be acquired for public purposes and that compulsory powers be exercised for its acquisition, it is necessary for the legislature to pass acts of Parliament in order to endow the appropriate statutory board with the requisite powers.

Moreover, not only are acts of Parliament necessary for the expropriation of property but they are also necessary for the payment of compensation for such expropriation, since the expenditure of public funds must be authorized by Parliament. So the provisions for compensation in respect of any particular industry which has been nationalized are considered by Parliament when the bill for the expropriation of the industry is before it and consequently the terms of the compensation authorized are embodied in the statute which empowers the state to acquire compulsorily the industry in question.

Secondly, in interpreting acts of Parliament which authorize the compulsory acquisition of property, the courts apply as a canon of construction, the rule of law that express words are needed for the expropriation of property without payment therefor. In other words, if it is the intention of the legislature that the property of an individual be compulsorily taken away from him without any compensation for the loss, then such an intention must be expressed in the expropriating statute in clear and unequivocal terms.

This canon of English law is really self-explanatory. It means that if it is the intention of the legislature to confiscate the property of private individuals it must express such an intention in plain terms, free from ambiguity and doubt, in the confiscatory statute. But, if the provisions of a statute which expropriates the property of private individuals are reasonably capable of being construed so as to avoid the expropriation of property without compensation "consistently with the general purpose of the transaction,"[5] they should be so construed. This canon of law applies to both partial and total confiscation of property and, *a fortiori*, to the construction of a statute delegating legislative powers.[6]

[4] The Government has power to deprive the subject of the possession of his property for the defense of the Realm in time of war: Attorney-General v. De Keyser's Royal Hotel, Ltd., [1920] A. C. 508.

[5] 31 HALSBURY'S LAWS OF ENGLAND 504 (2d ed. 1939).

[6] Newcastle Breweries v. The King, [1920] 1 K.B. 854.

This rule of law was first evolved in the Middle Ages[7] and has been followed and applied by the courts right down to the present time. For instance, in the case of *Central Control Board (Liquor Traffic) v. Cannon Brewery Co. Ltd.*,[8] in which a claim was made for compensation in respect of a public-house which had been acquired by the Board under powers conferred on them by the Defence of the Realm (Amendment) (No. 3) Act, 1915,[8a] and the Defence of the Realm (Liquor Control) Regulations, 1915, the former authorities on this point were referred to and Lord Atkinson in his judgment said:

> That canon of construction is this: that an intention to take away the property of a subject without giving to him a legal right to compensation for the loss of it is not to be imputed to the Legislature unless that intention is expressed in unequivocal terms. I used the words "legal right to compensation" advisedly, as I think these authorities establish that, in the absence of unequivocal language confining the compensation payable to the subject to a sum given ex gratia, it cannot be so confined.

As Parliament is omnipotent[9] there is, of course, nothing to prevent it from passing legislation which would empower the state to take property compulsorily without giving any right of compensation to the persons disappropriated. Such a policy has, however, never been adopted.

From at least as early as the sixteenth century, statutes were passed which both authorized the compulsory acquisition of land for public purposes and gave rights of compensation to the owners whose land had been so acquired. In 1542, for instance, the Mayor and the Dean of the Cathedral City of Gloucester were empowered[10] to provide a water supply for the city by bringing water in conduits from springs to it. The statute also provided for "satisfaction" to be given to the owners or possessors of ground used for the purposes of the act. A similar act[11] was passed in 1544 relating to London which contained provisions for compensation to be granted to the owners of land taken for the act by the award of Commissioners appointed for the purpose by the Lord Chancellor, with a right to an action of trespass should the Commissioners fail to agree.

During subsequent centuries, acts of Parliament were passed which contained

[7] In the case of Sir Francis Barrington, (1611) 8 Rep. 138a, reference is made to the cases of the Prior of Castleacre and the Dean of St. Stephens, (1503) 18 Hen. 7 Rot. 416 (unreported) quoted in Boswell's Case (1584), in which it was held that "when an Act makes any conveyance good against the King, or any other person or persons in certain, it shall not take away the right of any other, although there be not any saving in the Act."

[8] [1919] A. C. 744, 752. This followed the authority of many cases.

[8a] 5 GEO. 5, c. 42.

[9] This power may be compared with the power of the Federal Government of Australia to pass a law nationalizing private banking. In Commonwealth of Australia v. Bank of N. W. Wales, [1950] A. C. 235, it was held that the Banking Act, 1947, Section 46 of which prohibited the carrying on in Australia of the business of banking by private banks, was invalid as contravening Section 92 of the Australian Constitution which provides that "trade commerce and intercourse among the States . . . shall be absolutely free," and that in so far as banking business is carried on by means of interstate transactions it is within the ambit of, and the freedom is protected by, that section.

[10] Bill for Conduyttes at Gloucester, 33 HEN. 8, c. 35.

[11] 35 HEN. 8, c. 10.

provisions of a similar nature[12] relating to the compulsory purchase of land. Another important act which, however, did not relate to land, was the Act for the Abolition of Slavery in 1833[12a] which not only freed slaves in the British Empire but also gave to their owners compensation by way of cash payments. The total amount of compensation paid to the slave owners was £20 million. This was distributed by Commissioners appointed for that purpose among nineteen regions, regard being had to the number of slaves registered in each region and to the price paid on the average of eight years ending on December 31, 1830.[13]

As far as the compulsory acquisition of land was concerned, in each act the terms of the compensation were set out in full and it was not until 1845, when the Lands Clauses Consolidation Act[13a] was passed, that a uniform code of rules was laid down which could be applied by the incorporation of the Act in a special act for the compulsory acquisition of property. These provisions are still in force today, but where under any act of Parliament, passed before or after September 1, 1919, land is authorized to be acquired compulsorily by a government department or a local or a public authority, any dispute relating to compensation must be determined according to the provisions of the Acquisition of Land (Assessment of Compensation) Act, 1919.[14]

The compulsory purchase of land is but a preliminary step towards the nationalization of industry. It is, nevertheless, a matter of major importance as far as the right of compensation is concerned because the principle of granting a right of compensation to persons whose land has been expropriated was extended to include other types of assets which subsequently became acquired by the state.

The first type of industry to be expropriated in the twentieth century related to transport and its maintenance. In 1908 the Port of London Authority[15] was set up and to it were transferred the assets and undertakings of various companies which had owned and operated the docks in the river Thames. In consideration for the loss of their property the companies received specified amounts of "Port Stock" created under the terms of the Act. Again, in 1933, the London Passenger Trans-

[12] There were some exceptions to the rule, *e.g.*, the Turnpikes Act, 1822 (3 GEO. 4, c. 126); also no compensation was awarded if the owner's property was of very small value, *e.g.*, an interest in the subsoil: see the Public Health (London) Act, 1891, 54 & 55 VICT., c. 76, §44(2).

[12a] 3 & 4 WILL., c. 73.

[13] This worked out at an average rate of £37.10. per share. See D. THOMPSON, ENGLAND IN THE NINETEENTH CENTURY.

[13a] 8 & 9 VICT., c. 16.

[14] Compensation under this Act (9 & 10 GEO. 5, c. 57) is based on the value of the land. This is the amount which the land, if sold in the open market by a willing seller might be expected to realize, but all returns and assessments of capital value for taxation made or acquiesced in by claimant may be taken into consideration. The Act has now been extended and amended by the Town and Country Planning Act, 1947 (10 & 11 GEO. 6, c. 51), and Lands Tribunal Act, 1949 (12 & 13 GEO. 6, c. 42).

[15] The Port of London Authority Act, 1908, (8 EDW. 7, c. 68), transferred the undertakings of the London and India Docks Company, Surrey Commercial Dock Company, and Millwall Dock Company to the Port of London Authority. The Port of London Authority issued to those companies amounts of "A" and "B" Port Stock as compensation by way of substitution for existing debenture and other stocks of dock companies which were cancelled by the Act.

port Board was established and to it were transferred passenger transport undertakings owned both by companies and by local authorities within the area of the Board.[16] The terms of transfer for the majority of the undertakings were contained in the Act, but where this was not done or an agreement could not be reached, reference could be made to an arbitration tribunal set up under the London Passenger Transport Act, 1933. Transport stock was issued in consideration of the compulsory acquisition of the property to both the companies and the local authorities who had formerly owned the undertakings.[17]

The year 1938 saw the acquisition by the state of another type of property. In that year the Coal Act[18] was passed under which all coal and mines of coal together with property and rights annexed thereto and certain rights to withdraw support, subject to certain servitudes and restrictive covenants, were acquired by the Coal Commission. Compensation[19] was paid to existing owners for the acquisition of their interests according to provisions set out in the Act and consisted of sums of money ascertained by valuation of the interests that subsisted at the valuation date in coal, mines of coal, and acquired property and rights.[20]

[16] The London Passenger Transport Act, 1933, 23 & 24 GEO. 5, c. 14, transferred to the Board the underground railways and tubes, railway system, London General Omnibus Company, Green Line and other coach companies, Metropolitan Railway, tramways of Hertfordshire, Middlesex and the London County Council, County Boroughs of West Ham, East Ham, Croydon, Boroughs of Barking, Ilford, Leyton and Walthamstow, urban district councils of Bexley, Dartford and Erith, as well as the tramways of the City of London and the London Omnibus undertaking of Tilling and British Automobile Traction, Ltd., the London Omnibus undertaking of Thomas Tilling Ltd., and independent omnibus undertakings.

[17] Section 7 provided that the Board "as consideration for the transfer" to it of underground and metropolitan undertakings was to issue stock created by the Act (Transport Stock); for the Tilling, independent, or Lewis undertakings, consideration was in cash or partly cash and partly Transport Stock. Consideration for transfer of undertakings of local authorities consisted of stock for the larger authorities and in certain cases the Board paid off the local authorities' liabilities, such as loans raised for their transport undertakings and interest thereon.

[18] 1 & 2 GEO. 6, c. 52.

[19] The Commission was required to pay as compensation to existing owners for the acquisition of their interests, sums of money in respect of all coal and mines of coal, of all acquired property and rights and of all rights to withdraw support that were vested in the Commission. Compensation was to be ascertained separately for (a) the above acquired interests (certain minerals and surface servitudes excepted) which were known as "principal coal hereditaments" and (b) the exceptions, which were referred to as "subsidiary coal hereditaments."

The aggregate amount of compensation payable in respect of the principal coal hereditaments was £66,450,000.

[20] A Central Valuation Board was established to divide Great Britain into regions known as "valuation regions" and to allocate to each a regional allocation part of the aggregate amount of compensation.

The compensation was ascertained by valuing the "acquired interests" at the valuation date which subsisted in coal, of coal and acquired rights. The subject of each valuation was a unit known as a "holding," consisting of an acquired interest or of a group of such interests.

The value of a holding was the amount it might have been expected to realize if the Act had not been passed and it had been sold on the valuation date in open market by the existing owners as willing vendors to willing purchasers under a contract providing for completion on the vesting date. If there was also a right to withdraw support which was to vest in the Commission, it was to be valued as if each of the existing owners having power to grant such right, had agreed to grant it in addition to any acquired rights in which the holding subsisted. The amount was ascertained by the Central Valuation Board.

For each holding, in any valuation region for which compensation was payable, was paid (1) a sum

During the World War of 1939-45, plenary powers were given to the British Government by the Emergency Powers (Defence) Act, 1939[20a] and regulations made in pursuance thereof, to enable it to prosecute the war with the utmost vigour. Under Regulations 55 and 78 of the Defence (General) Regulations, 1939, a government department could appoint a controller to take charge of an undertaking carried on by a company and in order to secure an effective control over the undertaking could transfer the shares of the company to specified transferees. The price to be paid for such shares was to be such price as might be specified in an order made by the Treasury, and not less than the value of such shares as between a willing buyer and a willing seller on the date of the order authorizing the transfer.

The failure to include in the Regulations a method for the valuation of any shares so acquired led to litigation when in pursuance of the Regulations the Minister of Aircraft Production made an order appointing a controller to take charge of an aircraft production firm, Short Brothers (Rochester and Bedford) Ltd., and by a subsequent order transferred the shares in that company to his nominees. The Treasury Commissioners specified the prices of these shares to be 22s. 3d. a share in respect of the 5 per cent Redeemable Cumulative Preference shares, 29s. 3d. a share in the case of the "A" Ordinary shares, and 29s. 3d. a share in the case of the Ordinary shares. This valuation was based on the prices ruling on the Stock Exchange on the date on which the controller was appointed although in fact the Regulations in question did not require use of the Stock Exchange quotation for the purposes of valuation.

Two shareholders were dissatisfied with the prices fixed for their shares, which they alleged should be 41s.9d. a share, and contested the method of assessing the price used by the Treasury Commissioners. Consequently, an arbitrator was appointed to assess the value of the class of shares in question, namely, the "A" Ordinary shares and the Ordinary shares. The arbitrator stated his award in the form of a special case for the opinion of the Court, and Morris, J., confirmed his award which supported the Treasury Commissioners' valuation. An appeal was brought by the two shareholders to the Court of Appeal and subsequently to the House of Lords.[21]

In the House of Lords it was contended by the appellants that as the transfer was a transfer of all the shares, the Stock Exchange value was not a true criterion and that it was improper to fix the value on the hypothesis of the purchase of individual blocks of shares from individual shareholders as the Treasury Commissioners had done. The appellants further argued that the appropriate method was first to ascertain the value of the whole undertaking and then to determine the proportionate

bearing to the amount certified as attributable to the principal coal hereditaments the same proportion as the amount of the regional allocation for that valuation region bore to the aggregate of the amounts so certified by the Board in respect of all such holdings in that valuation region: and (2) a sum equal to any amount certified as attributable to subsidiary coal hereditaments.

[20a] 2 & 3 GEO. 6, c. 62.

[21] Short v. Treasury Commissioners, [1948] A. C. 534.

value of the separate classes of shares, and of individual shares within each class. To this contention the respondents replied that the proper basis of valuation was to assume that the shares had been bought in individual blocks from individual shareholders on the date of transfer and to fix the value accordingly, and that that value was best ascertained from the prices ruling on the Stock Exchange on the relevant date, namely, when the controller was appointed.

The House of Lords upheld the Treasury Commissioners' valuation. In deciding that the Treasury Commissioners' contentions were right, their Lordships held that the Stock Exchange prices afforded a fair criterion of the value of each block of shares as between a willing buyer and a willing seller on the relevant date, although the Regulations did not require that the value of the shares should be fixed on the basis of the Stock Exchange prices.

Following, therefore, the historical development of the principle of compensation for the expropriation of property as briefly outlined here, when the Socialist Government of 1945 put into operation one of the principal tenets of its policy, namely, the nationalization of certain industries, a statutory right of compensation was invariably given for assets and interests acquired by the state.[22] As will be seen, very detailed provisions are contained in the acts of Parliament which transferred the ownership of certain industries from private ownership and management to public control.

Since 1945 various acts of Parliament have been passed, the object of which was the compulsory transfer of the assets of specified industrial undertakings from private ownership to public ownership exercised through centralized autonomous boards. These statutes include the Bank of England Act,[23] the Cable and Wireless Act,[24] and the Coal Industry Nationalisation Act,[25] which were all passed in 1946. In the following year, 1947, were enacted the Transport Act[26] and the Electricity Act.[27] The Gas Act, 1948,[28] was the next nationalizing statute to be passed, and this was followed by the Iron and Steel Act, 1949,[29] which has only just come into force.

II

The industries which have been chosen by the Socialist Government, which took office in England in 1945, to be the objects of their policy of nationalization differ

[22] It should be observed that the principle of compensation for the expropriation of assets is not followed by all Socialists, see for instance Mr. Shinwell's speech as Minister of Fuel and Power in which he said in the House of Commons, "There is a substantial body of opinion in this country which is opposed to compensation . . . indeed there was a time in the Labour Movement when compensation was regarded as a mistaken policy. We are much more reasonable nowadays, but we must not be too generous with public money." 422 H. C. DEB. 1542 (5th ser. 1946).

The attitude of the majority of Socialists towards this matter may be epitomized in the words of Professor W. A. Robson who writes: "Compensation is both economically necessary and socially desirable, but the need remains for seeing that it is not excessive." PUBLIC ENTERPRISE 385-386 (Robson ed., 1937).

[23] 9 & 10 GEO. 6, c. 27. [24] 9 & 10 GEO. 6, c. 82. [25] 9 & 10 GEO. 6, c. 59.
[26] 10 & 11 GEO. 6, c. 49. [27] 10 & 11 GEO. 6, c. 54. [28] 11 & 12 GEO. 6, c. 67.
[29] 12 & 13 GEO. 6, c. 72.

fundamentally not only in nature and type, but also in operation and administration. For instance, the coal mining industry is totally unlike the transport or gas industries, in the type of material produced, main features of operation, and general management. Further, this industry differs from the latter industries in as much as it was entirely controlled by private or public companies, while the latter were owned sometimes by private or public companies, and sometimes by local authorities and public boards.

Moreover, not only are there basic distinctions between the different industries which have been expropriated, but different methods have been employed to effect their nationalization. For example, in some cases the whole undertaking has been transferred to the new central body entrusted with the task of administering the nationalized industry; whereas in others the capital assets only have been transferred, leaving the administration in the hands of the former owners, direction of policy and financial control only being exercised by the state body, as for example, in the case of the iron and steel industries.

As may well be expected, as a result of the diversity of the types of industry affected by nationalization and the different methods employed to transfer these industries from private to public ownership and control, many distinctions have inevitably been made in respect of the terms of compensation awarded to those persons whose interests and assets in the different industries concerned have been transferred to the state. In order, therefore, to give a clear and comprehensive picture of the compensation which has been awarded to persons whose interests and assets have been expropriated, it is necessary to consider not only the terms of the compensation, but also the different types of assets involved in the transfer, and different classes of owners who have been compensated.

The policy of the legislature in regard to the nationalization of certain industries has been to transfer the "securities" of the industries from private to public ownership. This means that the capital stock only of the industries concerned is transferred to the state. In cases such as these, the actual plant and management is not directly transferred to the state but the industry is managed by the state through the exercise of financial control and direction of general policy.

As far as certain industries are concerned, such a policy might well be expected. In the banking industry,[30] for instance, the whole of the capital stock (*i.e.*, bank stock) of the Bank of England was transferred by the Bank of England Act, 1946,[31] to a nominee of the Treasury to be held by that person on behalf of that department. So with the expropriation of the bank stock, the Government acquired control over the activities of the Bank and can dictate its policy.

The persons who were entitled to be compensated under this Act consisted of those persons who immediately before the appointed day, March 1, 1946, were

[30] The reader's attention is here drawn to the fact that private banks in England have not so far been nationalized.

[31] 9 & 10 GEO. 6, c. 27.

registered in the books of the Bank as the holders of any bank stock. These stockholders were compensated for the loss of their shares by the award of substituted stock created specially by the Treasury for the purpose of compensation, known as "government stock."

The amount of stock which each former stockholder of the Bank was given as compensation was the amount necessary to give such stockholder, by way of interest thereon, an annual sum equal to the average gross annual dividend declared by the Bank during the twenty years preceding March 31, 1945. As the Bank paid a fixed annual dividend of 12 per cent for the twenty-three years before that date, and as the interest on the government stock is determined under the Act to be 3 per cent, the Treasury had to issue sufficient stock at 3 per cent to enable a stockholder to have the same income which he formerly had from the stock yielding 12 per cent.[32] The interest on the government stock is payable every half year, in April and October. It will be continued to be paid until April 5, 1966, on or after which date the Treasury may redeem the stock at par.

A similar instance in which the stock only of an industry was transferred to the state is that of the company known as Cable and Wireless Ltd. This company had been formed as an operating company to hold and operate all the communication assets of certain submarine cable companies and of a wireless telegraph company as well as certain cables previously belonging to the Governments of the Commonwealth and beam wireless stations in the United Kingdom. The cable companies and the wireless telegraph company had received in exchange for the transfer of their assets to Cable and Wireless Ltd., all the shares issued by that company, so that they became holding companies in it. Some shares were, however, transferred to nominees of the Treasury in 1938 when the freehold of the beam wireless stations formerly leased to the company was transferred to the Treasury. In 1945, therefore, when the Government decided that the company should be publicly owned, the shares of the company were owned by both the holding companies and the Treasury. The Cable and Wireless Act, 1946,[33] was consequently passed in order to transfer the shares of the Company, other than those already held by the Treasury, to nominees of the Treasury for payment of compensation to the shareholders.

This case differs from the previous one because the owners who received compensation for the loss of their shares were not private stockholders but companies numbering nine altogether. The compensation which they received consisted of the issue of government stock of a value equal, on the date of the issue, to the amount of the company's compensation, having due regard to market values of other government securities existing at such date, together with interest thereon from the appointed day, which was January 1, 1947. The amount of each company's compensation was agreed upon between the company and the Treasury or in

[32] This is four times the amount of the bank stock and amounts to £58,212,000.
[33] 9 & 10 GEO. 6, c. 82.

default of agreement, determined by a tribunal set up by the Act. The Act contains detailed provisions to be applied by the tribunal in coming to a determination.[34]

An entirely different type of industry has been nationalized according to the same policy. This is the iron and steel industry, the last of the industries to be nationalized under the 1945 program of the Socialist Government and which is expropriated by the Iron and Steel Act, 1949.[35] The scheme of nationalization adopted in this instance consists of the compulsory acquisition of all the "securities" of ninety-two named companies which are engaged in the iron and steel industry and their transfer to the Iron and Steel Corporation set up by the Iron and Steel Act, 1949. The companies involved thus became publicly instead of privately owned, under the control of the Corporation.

The "securities" of a company which were compulsorily acquired under this Act have been defined by the Act to mean any shares, debentures, debenture stock, loan stock, mortgages, income notes, income stock, funding certificates, and securities of a similar nature. But they do not include any security forming part of the loan capital of the company which may be redeemed, either without notice or at one year's notice, at a price not exceeding the actual amount of the security together with any outstanding interest, at any time after the security has been created or when not less than one year has expired after it has been created; nor do they include any security forming part of the loan capital of the company which was issued after July 16, 1945, and before October 1, 1948, and the terms of which require it to be redeemed within a period of ten years and seven days after its date of issue.

Compensation is to be satisfied under this Act by the issue of government stock, called British Iron and Steel stock, specially created and issued by the Corporation for that purpose. This stock may be issued by the Corporation on such terms and conditions as the Corporation with the consent of the Minister and the approval of the Treasury may determine. As, at the time of writing, the Iron and Steel Act, 1949, is not fully operative, no stock has yet been issued so that it is impossible to give any details relating to the interest payable upon the stock and similar matters.[36]

The owners to whom compensation is payable are the persons who, immediately before the date of transfer, were the holders of any securities with values determined before that date, or were the holders of any securities during the period between the date of transfer and the conversion date, who are entitled to certain rights. They become on that date the holders of the amount of British Iron and Steel stock to which they are entitled under the Act in satisfaction of compensation payable in

[34] This consisted of three members who were required to ascertain the amount which the operating company's undertaking might be expected to realize if sold in the open market on the appointed day as a going concern by a willing seller to a willing buyer on the basis of the net maintainable revenue and the number of years' purchase to be applied thereto. The amount so ascertained was taken as being the aggregate value of the issued share capital of the company and the amount of each company's compensation was the proper proportion of that value as determined by reference to the number of shares held by the company as set out in the Act.

[35] 12 & 13 GEO. 6, c. 72.

[36] Value of iron and steel securities which vested on February 15, 1951, is about £300 million.

respect of the securities. The amount of compensation which is awarded to such persons is the amount of British Iron and Steel stock which in the opinion of the Treasury was at the general date of transfer of a value equal to the value of the securities acquired, regard being had in estimating the value of the British Iron and Steel stock so issued to the market value of government securities at or about that date.

The value of the securities which have been expropriated, was for the purpose of compensation, determined by the dates on which they were quoted on the Stock Exchange or issued. So, as it will be seen, a different valuation was given under the provisions of the Iron and Steel Act, 1949, in respect of those securities quoted on the Stock Exchange in 1945 and 1948, to those quoted after dates specified in 1945 and before specified dates in 1948, and to those issued after the specified dates in 1948.

In the first place, when securities were quoted on certain dates in 1948 and in 1945, the value of these securities is ascertained by taking the average of the mean of the quotation[37] for securities of that class appearing in the Stock Exchange Official Daily List on specified dates in 1948, or appearing in that list or the Stock Exchange Daily Supplementary List on specified dates in 1945, whichever was the higher.[38] Secondly, if a new class of securities has been issued after the dates specified in 1945 and before the first date specified in 1948 and the securities were quoted in the Stock Exchange Official Daily List on all the dates in 1948, the value of those securities is deemed to be the average of the mean of the quotations for securities of that class appearing in that List on the specified dates in 1948. If in the case of either of these two classes of securities a fresh issue of securities has been made after the last relevant quotation date, the value of every security of that class is to be deemed to be the average of the values of all the securities of that class calculated on the basis that the value of each of the securities comprised in that issue is the price at which it was issued or, if it were issued free, nil, and the value of the remaining securities is the value which those securities had or would have had for the purposes of this provision immediately before the issue took place.

In the third place, as far as a class of securities which has been issued on or after the specified dates in 1948 is concerned, the value of such securities is to be deemed to be the price at which they were issued. If they were issued free, their value is deemed to be nil and the provisions relating to the issue of fresh securities or conversion of securities are to apply to any fresh issue or conversion of securities of that class.[39]

[37] The mean of the quotations means the average of the two figures shown in the Stock Exchange Official Daily List or Supplementary List, on the dates in question in respect of the security in question under the heading "quotations" or "nominal quotations."

[38] Such an addition, if any, being made to the higher average as was necessary to make it a complete multiple of one penny.

[39] The value of securities comprised in the first three classes of securities mentioned, converted after the last relevant quotation date into securities of a different nominal value, was deemed for the

The Act also contains provisions which are to be applied to the valuation of securities in two special cases. These consist of the cases in which all the securities of any issue were originally disposed of to a person who did not become the registered holder of them,[40] and where securities have been issued by a company to another company in consideration of the transfer of property belonging to the latter company to the former company.[41] Finally, provision is made for the valuation of any securities which do not fall within any of the classes specified above. The valuation of such securities is to be determined by agreement between the stockholders' representatives[42] and the Minister of Supply. In default of such agreement, the matter is transferred to an arbitration tribunal set up under the Act.

These provisions relating to the value of securities for the purpose of compensation under the Iron and Steel Act, 1949,[43] are complicated and tedious. But, they have been deliberately set out in order to show the details which the legislature has considered to be necessary for insertion in the Act in order to fix the precise terms of compensation which in its opinion are adequate to recompense the owners who have suffered loss of their property. The inclusion of these detailed provisions in the Act itself has the result of both empowering the Corporation to spend public money by way of issue of stock in satisfaction of compensation while at the same time delineating its powers to award compensation, and of assuring to the disappropriated owner, not only a right to compensation but also the details of what he is likely to expect.

It is interesting to compare the policy of the legislature in regard to the nationalization of the iron and steel industry with that which it adopted to nationalize the coal mining industry on account of the radically different measures which were employed in each case. The main distinction between the two methods adopted is that whereas with regard to the iron and steel industry, the assets transferred to the state consisted of the securities of the companies to which the Iron and Steel Act, 1949, applied, in the case of the coal industry, the assets of the companies en-

purposes of compensation under this Act, to be a value bearing to the value which the securities had or would have had for the purposes of this provision immediately before the conversion took place, the same proportion as the nominal value of the securities so converted had to the nominal value of the securities immediately before the conversion took place. Further, the provisions relating to the fresh issue of securities applied to any fresh issue of securities which have been so converted, but if a part only of a class of securities had been so converted, the converted securities were to be treated as securities of a different class from that of the unconverted securities.

[40] The price was (a) the price paid for that security by the first registered holder thereof, or (b) the price received by the company for the security together with an amount equal to 2½ per cent of that price, whichever was the lower.

[41] The value of the securities of the transferring company was first determined as above, as though such transfer had not taken place. The aggregate value must then be apportioned as between the securities of the transferring company and the securities so issued as determined by the stockholder's representative or by arbitration.

[42] This is a person appointed for each company by the holders of securities at a meeting called for that purpose. In default of such appointment, the Minister makes the appointment. He calls meetings of the stockholders and acts as their representative in negotiations with the Minister.

[43] 12 & 13 GEO. 6, c. 72.

gaged in that industry which were expropriated comprised the actual mines, colliery plants, and physical assets of the companies. This distinction in the measures used to nationalize these two great industries is reflected in the methods employed to compensate owners who have been disappropriated. In the former case compensation is given for the loss of securities, while in the latter case compensation was awarded in respect of the different classes of assets which were compulsorily acquired.

The assets of the companies which were engaged in the coal mining industry and which were acquired by the state under the Coal Industry Nationalisation Act, 1946, fall into three main categories. The first class consists of those assets which vested by virtue of the Act in the Coal Board on the "primary vesting date" and which were transferred to the Board without option.[44] The second class comprises certain assets which were transferable to the Board at the option of either the Board or the owners of the assets,[45] while the third class consists of assets which were transferable at the option of either the Board or the owners of the assets subject to arbitration in the case of objection by either side.[46] Certain other interests have also been transferred to the Board. These included certain interests in patents and designs which were transferable to the Board at the option of either the owners or the Board subject to arbitration in the case of objection. All rights and liabilities attaching to the assets transferred to the Board also passed to it. All these rights, assets, and interests which became vested in the Coal Board under the Act are known as "transferred interests" and are referred to accordingly.

The compensation payable under the provisions of the Coal Industry Nationalisation Act, 1946, was paid with reference to these transferred interests. The values of these transferred interests were assessed separately for two different purposes in regard to compensation. In the first place, it was ascertained in respect of what was known as their "coal industry value." This means their value so far as was determined under the provisions of the Act to be attributable to their usefulness for activities relevant to district wages ascertainment which are defined by the Act to be the periodic ascertainments of the results of the coal industry in accordance with which the wages of mineworkers have been regulated under agreements made for that purpose between colliery owners and mineworkers. Secondly, it was ascertained in respect of their value for "subsidiary purposes," namely, for any purposes which did not fall within the first category.

Each transferred interest was assessed by the Minister of Fuel and Power

[44] These include unworked coal and mines of coal; collieries, coke ovens and manufactured fuel plants; colliery electricity plants; colliery transport, loading and storage works; colliery merchanting property; colliery institutes etc.; maintenance, operation, office and general equipment; stocks of colliery products; and certain curtilages and development sites.

[45] These comprised colliery stores; waterworks; certain wharves etc., used for colliery purposes; housing property; and farming property.

[46] These consisted of manufactured fuel plants other than those of collieries; certain transport loading and storage works other than those of collieries; associated merchanting property; central reserve stations; brickworks; curtilages and development sites not within those referred to in note 44, *supra*, and other colliery assets of any kind except iron and steel works.

according to whether its value could be attributed, either as a whole or in part, to usefulness for activities relevant to district wages ascertainments. If a part only of a transferred interest was so assessed, then the Minister decided to what extent the part involved could be so attributed. The Minister's decision was subject to determination by two accountants in the case of objection and then to arbitration in the event of their failure to reach agreement.

For the purposes of compensation, the transferred interests were grouped into units called "compensation units." These units were constituted by the Minister so as to include in each such unit every transferred interest. In deciding how the transferred interests were to be dealt with as regards their arrangement in compensation units, the Minister was required to treat as the normal compensation unit, subject to variations in special circumstances, a unit consisting of all the transferred interests of a single colliery concern or other owner which were in property situated permanently in, or ordinarily separated from, a single district and which were not subject to different incidents as respects the ascertainment of compensation.

The compensation units were allocated to certain districts which were prescribed by the Minister to be "valuation districts" for the purposes of the Act. They corresponded with the districts for which district wages ascertainments were made for the purposes of the adjustment of wages payable in 1939. The Minister could, however, if it were more convenient, create a valuation district for two or more such districts or vice versa.

After the transferred interests had been valued in respect of the two purposes mentioned above, and had been grouped into compensation units allocated to valuation districts, the value of each compensation unit itself was assessed. This was ascertained by a board for each district which was specially set up for the purpose and called the "District Valuation Board."

Each Board was required to determine the value of the compensation unit. This was taken to be the amount which it might have been expected to realize if the Act had not been passed and the unit had been sold on the primary vesting date in the open market by a willing seller to a willing buyer, no allowance being made because the vesting of the transferred interests comprised in the unit was compulsory. The Board had also to state what proportion of the value of the compensation unit was a coal industry value and how much of it was the value for subsidiary purposes.

As far as the sale in open market is concerned, this does not mean a purely hypothetical market free from any restrictions imposed by law but a sale having regard to all the circumstances which existed at the time, *i.e.*, on the primary vesting date, on which it was deemed to have taken place. For instance, the undertaking of a colliery company[47] was assessed for compensation purposes according to the provisions of the Act as stated above and the amount of compensation payable in respect of it was fixed by the Northern District Valuation Board. The company

[47] Priestman Collieries Ltd. v. Northern District Valuation Board and Anor., [1950] 2 All E.R. 129.

agreed to the amount with the exception of the amount awarded for their mining timber which they contended should have been valued at a higher price than that awarded by the Board.

A case having been stated by a referee, the Court held that the assumed sale was to be taken as subject to the conditions under which willing buyers and sellers in Great Britain could legitimately have operated on the primary vesting date and that the requirement of the Act that regard should be had to all relevant circumstances showed that what was contemplated was a sale in the actual market, *rebus sic stantibus*. As at the time of the vesting date there was in force an order fixing the maximum prices of timber, the sale of the colliery timber in question must have been taken as subject to the provisions of that order so that the value as determined by the Board was held to be the correct one, the Board having taken the provisions of the order into account when fixing the value.

Compensation could also be awarded in respect of overhead-expense increase which had been caused by the severance of transferred interests from the assets of a business which included but did not consist entirely of transferred interests, and which could not reasonably be avoided. The amount was determined by the District Valuation Board with reference to the loss sustained at any time during the five years beginning with the primary vesting date. As well as this compensation, provision was also made for the award of compensation to a colliery concern in respect of a refund of capital expended by it in providing or improving any transferred interest when such expenditure was authorized by the Minister and was incurred on or after August 1, 1945. Such a refund was separate from the ordinary compensation and the value of a compensation unit as determined by a District Valuation Board, was reduced by the amount of the refund.

The aggregate amount of compensation which has been made in respect of the coal industry value of all the transferred interests was a sum which has been arrived at under an agreement made for this purpose before the passing of the Coal Nationalisation Act, 1946, between the Minister of Fuel and Power and the Mining Association of Great Britain, by the Coal Industry Compensation Tribunal. This Tribunal, which was presided over by Lord Greene, fixed this sum at £164,660,000. This amount has been apportioned among the valuation districts by the Central Valuation Board which has been established by the Act for that purpose.

The amount of compensation which was made in respect of a compensation unit which had been allocated to a valuation district was the aggregate of an amount bearing the same proportion to what was certified to be the coal industry value of that unit as the amount apportioned to that district bore to the aggregate of what was so certified to be the coal industry values of all compensation units allocated to that district in respect of which compensation was made, and an amount equal to what was certified to be the value of that unit for subsidiary purposes.

The persons to whom compensation was payable in respect of transferred interests

fell into three categories. In the first place, if the compensation unit included only transferred interests of a company, none of which was subject to any charge or lien for securing money or to any other restriction, right, or liability from which it is freed by the Act, it was the company which was entitled to the compensation. Secondly, if a compensation unit included only the transferred interests of a person other than a company and none of those interests was subject to the charges or liabilities mentioned above, then that person was the person entitled to compensation. Finally, in any other cases, the person entitled to receive the compensation was the person designated by regulations made to safeguard the rights of persons entitled to beneficial interests in the compensation and the person designated might be an officer of a prescribed court or trustees appointed by the Minister.

As far as the mode of satisfaction of compensation is concerned, this took the form of the issue of government stock, apart from three cases. In the first place, compensation in respect of a compensation unit which comprised interests arising under a former freeholders' lease was satisfied by a money payment.[48] Secondly, the amount of compensation in respect of any compensation unit which was equal to the value of the unit so far as attributable to stocks of products of colliery production activities, or to consumable or spare stores as specified by the Act, was satisfied by a money payment. Finally, certain other cases were also satisfied by money payments if the Minister considered it expedient to do so. But apart from these specified cases, all compensation, including that in respect of overhead-expense increases, had to be satisfied by the issue of stock.[48a]

This outline of the main provisions relating to compensation in respect of assets nationalized under the Coal Industry Nationalisation Act, 1946, shows that in contradistinction to the terms of the Iron and Steel Act, 1949, a complicated system of administrative machinery was set up to assist in the assessment of the values of assets for the purposes of compensation. So, a special tribunal was established to assess the total amount of compensation payable in respect of the total assets nationalized. Also, district valuation boards were set up for the purpose of assessing the values of compensation units. The compensation stock was actually issued by the Coal Commission itself. The special nature of the industry and the method of its nationalization required special measures relating to compensation which were not necessary in the case of the iron and steel industry in which the securities of the firms engaged in the industry were expropriated.

The method adopted to nationalize the transport industry is similar to that employed in regard to the coal industry. In each case physical assets were acquired by the state, but whereas in the former industry the owners who were disappropriated were exclusively private individuals, as far as the transport industry is concerned, the owners whose assets were expropriated included not only private persons and companies, but also local and public authorities, such as the London Passenger Trans-

[48] This was an interest which arose under the Coal Act, 1938.

[48a] Refunds of capital outlay, as described *supra*, were also satisfied by money payments.

port Board to which, as has been mentioned, the transport undertakings of private companies had already been transferred in 1933. This multiplicity in ownership has had the effect of further complicating the matter of compensation.

The nationalization of transport is of particular interest on account of the different types of transport concerned. These included not only road transport of various kinds, but also rail transport and transport using inland waterways or canals. As a result of the distinct types of transport involved, the Transport Act, 1947,[49] is divided into several parts which deal with the different types. Thus Part II of the Transport Act, 1947, deals with railways and canals, Part III of the Act contains the provisions relating to road haulage transport, while under Part IV of the Act, schemes may be made relating to passenger road transport and trading harbor undertakings. This separate treatment is particularly necessary as far as compensation is concerned, because different methods of awarding compensation are provided by the Act, in regard to railway and canal undertakings on the one hand, and road transport undertakings on the other.

As far as railways and canals are concerned, the whole of the undertakings of certain bodies specified in the Transport Act, 1947, were vested in the Transport Commission on January 1, 1948. These comprised all the railway, canal, and inland water navigation undertakings in Great Britain which were subject to the control of the Minister of Transport, at the date of the passing of the Act, under an order made pursuant to Regulation 69 of the Defence (General) Regulations, 1939. Undertakings which were carried on to a preponderant extent outside such control were excluded from the Act, but not those which were carried on only to a limited extent. As can well be imagined, the state then acquired a variety of assets. These included not only railway lines, stations, and rolling stock, canal waterways, warehouses, and port facilities, but also hotels and other amenities for the traveling public.[50]

The compensation which was paid in respect of the acquisition of these undertakings, was not paid by reference to their assets, but by reference to specified securities of the undertakings as set out in the Act. No other form of compensation than this was payable except as expressly provided by the Act.

The amount of compensation which was payable was fixed at a figure equal to the aggregate value of the securities of the various undertakings which had been acquired by the state. But when securities issued by one body were all owned by other specified bodies, those securities vested in the Commission as part of the property of those other bodies, from which it follows that no compensation was paid to the body which issued them.

As far as the valuation of these securities is concerned, this had been calculated

[49] 10 & 11 GEO. 6, c. 49.

[50] The following were transferred to public ownership: 60 railway undertakings, 52,000 miles of track, 1,230,000 wagons, 45,000 passenger coaches, 20,000 locomotives, 25,000 horse drawn wagons, 70 hotels, 50,000 houses, 1,640 miles of canals and waterways, and 100 steamships: 437 H. C. DEB. 36 (5th ser. 1947).

prior to the passing of the Act, and was specifically included in it.[51] These values were determined by taking the average of the mean of their quotations in the Stock Exchange Official Daily List on specified dates, or, when they were quoted in the List on other specified dates, known as alternative dates, and their values were higher than those quoted on the former dates, the average of the mean of the quotations for those dates. Where the quotations were expressed otherwise than in terms of price values of £100 nominal of acquired stock, the compensation values were adjusted to correspond with £100 of a nominal value of stock acquired.

If securities were acquired which did not have a market quotation or were not quoted on the Official List on the days specified, an arbitration tribunal specially set up by the Act for the purpose, was empowered to determine their values, on application by the Commission. In assessing their value, the tribunal was required to have regard to the values specified in the Act for those securities just previously mentioned, which were most nearly comparable with the securities in question.

The Transport Act, 1947, also contains provisions to be applied in valuing securities in special circumstances. So, where all the securities of a certain specified description were held by a local authority, their value could be agreed upon between the local authority and the Minister of Transport instead of by way of arbitration, and the amount so determined was the value of these securities for compensation purposes. Securities guaranteed by the Treasury were deemed to have a value equivalent to their nominal value.

With regard to the compensation being awarded in respect of railway, canal, and inland water navigation undertakings which belonged to local authorities, the only compensation which was payable in respect of such undertakings was an amount of money which would cover any payments due on or after the date of transfer for redemption of securities or repayment of loans made by the local authority for the purposes of the undertakings, together with interest thereon. Certain additional compensation might, however, also be given in certain circumstances.

Special provisions are contained in the Act with regard to privately owned railway wagons. Railway wagons which at the date of transfer were under a requisition order of the Minister made under Regulation 53 of the Defence (General) Regulations, 1939, vested automatically in the Commission and compensation could not

[51] These are some examples of the values specified in the Act Schedule Four:

Body by which security was issued.	*Security*	*Value of Security (per £100 nominal value) for compensation.*
G.W.R.	2½% debenture stock	£ 95.10.0.
G.W.R.	5% debenture stock	£142. 7.6.
L.M.S.	4% debenture stock	£118.13.9.
L.M.S.	ordinary stock	£ 29.10.0.
L.N.E.R.	3% debenture stock	£103. 5.0.
L.N.E.R.	4% first preference stock	£ 58. 5.0.
S.R.	5% debenture stock	£139.10.0.
S.R.	deferred ordinary stock	£ 24. 0.0.

The total amount of compensation paid in respect of these four railways was £910,000,000.

be claimed by the owners for any damage done to the wagons during the time they were requisitioned. Compensation was, however, payable in respect of the compulsory acquisition by the Commission of these railway wagons. Broadly speaking, the amounts which were paid as compensation were specified in the Act, Schedule Six of which sets out in detail the relevant sums calculated according to the type of wagon and the year in which it was built.[52] These amounts were paid to the person who, immediately before the date of transfer, was the owner of the wagon. If, however, any of the wagons were the subject of a hire-purchase agreement the hirer could claim a portion of the compensation. Where a wagon was subject to a mortgage or incumbrance, the compensation was payable to the incumbrancer, if the charge was registered under the Companies Act, 1947,[52a] or as a bill of sale.

With regard to the other type of transport acquired by the state, namely, road transport, the Transport Act, 1947, contains provisions for the acquisition of all long distance road haulage undertakings whose activities should essentially be coordinated with rail transport. This necessitated the transfer of undertakings which came within a defined formula of acquisition, those operating the carriage of certain goods, however, being specially excluded.

As far as compensation for road haulage transport is concerned, this was not paid in reference to the securities of the undertaking whose vehicles were affected but in respect of four separate matters. In the first place, compensation was payable in respect of any goods vehicle which had vested in the Commission, equal to the cost, as at the date of transfer, of replacing the vehicle by a new vehicle of a similar type, subject, however, to depreciation at the rate of one fifth per year (one seventh in the case of rigid trailers) on the reducing figures for every completed year since the vehicle was first registered, and to deterioration in condition. Secondly, compensation was paid for any property vesting in the Commission, other than a goods vehicle, the compensation being equal to the amount which the property would fetch if sold in the open market, estimated as at the date of transfer, and as if the Act had not been passed. In the third place, compensation was given for cessation of business, the amount being paid to a person whose business has either totally or partially ceased as the result of the operation of a notice of acquisition, being calculated on the basis of the net annual profit as defined in the Act, and being not less

[52] Figures are given for various types of wagons and they depreciate in value according to their age. Here are a few examples:

An 8 ton wagon built in 1946 was worth £248
An 8 ton wagon built in 1933 was worth £146
An 8 ton wagon built in 1919 was worth £ 74
An 8 ton wgon built in 1903 was worth £ 19
An 12/13 ton all steel wagon built in 1946 was worth £306
An 12/13 ton all steel wagon built in 1937 was worth £169
An 12/13 ton all steel wagon built in 1917 was worth £ 22
A 21 ton hopper (all types) built in 1944 was worth £430
A 21 ton hopper (all types) built in 1930 was worth £232
A 21 ton hopper (all types) built in 1917 was worth £47

[52a] 10 & 11 GEO. 6, c. 47.

than twice nor more than five times the net annual profit, regard being had in calculating such amount to the net annual profit which might have been made but for the Act. The last head covers the case in which compensation has been given for severance of property which has occurred because the activities of an undertaking consisted in part of operating vehicles which have been acquired by the Commission under the Act, and also of other activities which after the transfer of the vehicles are still carried on by the undertaking. In such a case, if it appears that the overhead expenses have increased in proportion after the transfer, the Commission had to pay to the transferor an amount of compensation in respect of the severance, as fairly represents the burden of that increase over the five years beginning with the date of transfer, provided that such increase could not have reasonably been avoided by the transferor. Special provision is also made in the case of property which is subject to a hire-purchase agreement, for making deductions from or additions to the total amount of compensation payable in respect of an undertaking in certain cases, and for property subject to incumbrances.

The position with regard to passenger road transport is not altogether clear. This form of transport service means a service of express carriages, stage carriages, tramcars, or trolley vehicles carrying passengers. It was not directly transferred to the Commission by the Transport Act, 1947, but the Commission is empowered by that Act to make a scheme to provide adequate, suitable and efficient passenger road transport services for any area. Such a scheme may require a designated body to provide these services instead of the Commission itself, and it may transfer the passenger road transport undertaking either to such a body or to itself. The provisions relating to compensation in respect of railway and canal undertakings in Part II of the Transport Act, 1947, are incorporated in schemes made in respect of passenger road services.

The compensation which was payable to the owners of the expropriated property and whose interests have been affected by the operation of a notice of acquisition made under the Act, subject to the exceptions given below, was satisfied by the issue to them of the appropriate amount of British Transport Stock. The stock, created and issued for the purpose of satisfying any right to compensation, was such amount of stock as was, in the opinion of the Treasury, equal in value at the date of issue to that appropriate amount, regard being had to the market value of government securities at that date.

The British Transport Stock was issued and dealt with upon such terms and conditions as were prescribed by regulations made by the Minister with the approval of the Treasury. In exercise of this power, the British Transport Stock Regulations 1947 were made. These contain provisions as to issue and redemption of stock, maintenance of a stock register and stock certificates, payment of interest and redemption moneys, and various miscellaneous matters. The interest on the stock is payable every half year, and it has been determined to be 3 per cent.

In certain cases a money payment could be made in lieu of the issue of British Transport Stock in satisfaction of compensation. For instance, if the total amount of compensation to be paid to a person at any date was less less than £2,000, on being given written notice by the person to whom it was to be paid, the Commission could pay in cash up to £2,000, and interest thereon from the date of transfer. Additional compensation in cash could also be given to a body whose undertaking is acquired by the state under a scheme made by the Minister of Transport under Part IV of the Transport Act, 1947. Again, if the total amount of compensation due to any one person in respect of his railway wagons which have vested in the Commission, did not exceed £2,000, it could be paid in cash. As far as local authorities are concerned, not only did they receive lump sums in respect of their railway and canal undertakings which have been acquired by the Commission, but they may also receive additional compensation in cash in respect of all undertakings which could be transferred to the Commission under a scheme made by the Minister under Part IV of the Transport Act, 1947.

An analysis of the methods of compensation which were applied by the legislature in the Transport Act, 1947, to the various kinds of transport undertakings which vested in the British Transport Commission shows that they combine in one Act all the different methods applied to the industries already discussed by different acts of Parliament. Therefore, not only is there compensation based on the value of securities, but also for specified assets, *e.g.*, railway wagons, and goods vehicles. So, also, it takes the form both of the issue of stock and of cash payments.

The last two nationalized industries to be considered for the purposes of compensation, are the electricity and gas industries which were nationalized by the Electricity Act, 1947,[53] and the Gas Act, 1948.[54] As, in contradistinction to the nationalized industries already discussed, these two industries have certain features in common, the provisions relating to compensation in respect of the undertakings operating these services which have been acquired by the state, may conveniently be considered together.

In the first place, the whole of the rights, property, liabilities, and obligations of certain undertakings vested in the British Electricity Authority or the British Gas Council by virtue of their respective Acts. In the case of the British Electricity Authority, these consisted of statutory undertakings including local and public authorities, composite companies, and certain subsidiary bodies; power station companies; and electricity holding companies; while in regard to the British Gas Council, they comprised statutory undertakings, local authorities and composite companies, non-statutory undertakings, ancillary companies, and certain defined holding companies. All the bodies, the whole of whose undertakings were expropriated, except local authorities, were dissolved by the Act in question.

Secondly, compensation was paid in respect of the nationalization of both in-

[53] 10 & 11 GEO. 6, c. 54. [54] 11 & 12 GEO. 6, c. 67.

dustries to the owners of securities of the undertakings affected. These comprised the holders of securities,[55] *i.e.*, any shares of stock, debentures, and debenture stock of the undertaking in question, immediately before the vesting day.

In the third place, the basis for valuation of the securities was the same. Under the Electricity Act, 1947, the securities were valued if they had been quoted in the Stock Exchange Official Daily List on specified dates in 1946, by reference to the mean of the quotations appearing on those dates, or the mean of the quotations on specified dates in 1945, whichever was the higher. With regard to fresh issues of securities after November 8, 1946, the value of every security was deemed to be the average of the values of all the securities of that class calculated on a specified basis other than the foregoing, while special provisions are also laid down relating to the conversion of securities, after that date. Any securities not quoted on the London Stock Exchange or not coming within the last foregoing provisions were valued by agreement between the stockholders' representative and the Minister of Fuel and Power, or in default of agreement, by arbitration.

As far as the valuation of securities under the Gas Act, 1948, is concerned, this, too, was based on the Stock Exchange principle. Where securities were quoted in the Stock Exchange Official Daily List on certain dates in 1947, or 1945, their value was to be either the average of the mean of the quotations for that class of security on the dates in 1947, or the average of the mean of the quotations on the specified dates in 1945, whichever was the higher. Special valuations were made in respect of fresh issues of securities made after December 31, 1945, and in respect of conversions of securities. The value of securities which were not quoted on the Stock Exchange on the specified dates was determined by agreement between the stockholders' representative and the Minister of Fuel and Power, and in default of agreement by arbitration.

Finally, both the Electricity Act, 1947, and the Gas Act, 1948, contain special provisions relating to compensation payable to composite companies and to local authorities. Composite companies are companies which supply another commodity such as water as well as gas and electricity, and which remain in existence even though their gas or electricity undertakings have been expropriated. Under the Electricity Act, 1947, the total value of the securities of a composite company was apportioned between the electricity and the other undertakings on the basis of the annual net revenues of the electricity and the other undertakings in the financial years corresponding to the financial years 1944-46, the compensation payable being the portion so found to be appropriate to the electricity undertaking, together with an arbitrary allowance for severance of 5s per thousand units sold in 1946. Similar provisions, *mutatis mutandis,* are contained in the Gas Act, 1948.

With regard to local authorities, the liability of an Area Gas Board and the Central Electricity Authority for compensation was limited to the payment of lump

[55] A redeemable mortgage debenture is a security within the meaning of the Gas Act, 1948, and must be treated as such, see Pearl Assurance Co. Ltd. v. West Midlands Gas Board, [1950] 2 All E. R. 844.

sums in respect of loans and interest thereon as well as payments in respect of existing redemption arrangements when they fall due. Payment was also made to compensate for severance, that is to say, the loss of revenue from electricity departments towards the general expenses of the authority, the sum of five million pounds being divided among local authorities in respect of their electricity undertakings and two and a half million pounds in respect of their gas undertakings. A further amount of compensation was also payable to local authorities in respect of their electricity undertakings for certain capital expenditures incurred after November 19, 1945.

As far as the satisfaction of compensation is concerned, this took the form of government stock, specially issued by both the Central Electricity Board and the British Gas Control. Both the British Electricity Stock and the British Gas Stock is issued on terms and conditions approved by the Treasury. The annual interest has been determined at 3 per cent.

The amount of stock which was issued to holders of securities valued according to the above principles, was that amount which in the opinion of the Treasury was on specified dates of a value equal to the value of the securities, regard being had to the market value of government securities on certain dates. The same provision applied to both Electricity and Gas Stock, different dates being specified in each case.[56]

The provisions of these Acts relating to nationalization and compensation are similar to some of the corresponding provisions contained in the different acts which have previously been discussed. For instance, the physical assets of the electricity and gas undertakings have been transferred under their appropriate Acts to their respective statutory boards, in the same way that physical assets of companies engaged in the coal mining industry and road haulage transport and railway industries were transferred by the Coal Industry Nationalisation Act, 1946, and Transport Act, 1947, to their respective statutory boards. On the other hand, compensation was awarded under the Electricity Act, 1947, and Gas Act, 1948, not in respect of assets as was the case of the industries just cited, but in respect of the securities of the companies operating electricity and gas undertakings, as in the case of the companies engaged in the iron and steel industries which are nationalized by the Iron and Steel Act, 1949. The compensation awarded for local authorities, however, was similar in the cases of the Transport, Electricity, and Gas Acts.

One final point must be mentioned in discussing the statutory provisions relating to compensation for expropriated property, and that relates to negotiability of government stock issued by way of compensation to owners for the loss of their property. This subject may be regarded from two aspects. In the first place, the

[56] The nominal value of British Electricity Stock issued up to May 24, 1949, was £445,23,861; annual interest thereon amounted to £13,369,172. 465 H. C. DEB. 53, 70 (5th ser. 1949). Total compensation value of gas securities issued up to Nov. 9, 1949, was £126 million. 469 H. C. DEB. 129 (5th ser. 1949).

terms upon which such stock is held must be considered, and, secondly, the restrictions upon its subsequent disposal must be examined.

As far as the first matter is concerned, it is usual for an act of Parliament which has expropriated the securities of a company and which provides for compensation by way of government stock to include provisions to the effect that the substituted stock is to be held on the same rights and trusts and subject to the same powers, privileges, provisions, charges, restraints, and liabilities as those on, or subject to which the former securities were held immediately before the day of conversion. The Port of London Authority Act, 1908,[56a] contained provisions to this effect, and this practice has been followed in the recent acts which have expropriated securities.

Provisions such as these are of considerable importance as far as settlements of property are concerned, and give rise to various problems. For instance, in the case of In re *Municipal and General Securities Company's Trust Deed*,[57] a fixed investment trust constituted and regulated by a trust deed held a number of share units which included shares nationalized by the Transport Act, 1947, the Electricity Act, 1947, and the Gas Act, 1948. Government stock had already been issued by way of compensation in respect of the shares nationalized by the first two Acts and was intended to be issued in respect of the Gas Act, 1948. The point in issue here was whether the trustees were under any duty or had any power to sell the compensation stocks and if not, whether the Court would authorize such a sale under the Trustee Act, 1925.[58] It was held that having regard to the provisions of the Acts relating to the terms upon which the substituted stock was to be held, the compensation stocks issued in exchange for the stocks of nationalized undertakings must be held on the same trusts and subject to the same powers and liabilities as the stocks for which they were exchanged, and that, therefore, although an entirely different kind of stocks was now held in place of the original stocks, they must be retained by the trustees and there was no power or duty to sell them. The Court, moreover, could not authorize such a sale under the Trustee Act, 1925.[59]

With regard to the second aspect of negotiability, all government stock which is issued in compensation for expropriated assets whether in reference to securities, physical assets, or any other matter, may be freely negotiated by the holders thereof. In fact, provisions to this effect have been included in the acts which nationalize industries with special reference to persons such as trustees or personal representatives who are empowered to dispose of such stock subject of course to the liabilities of their trusts.

There was, however, an important exception to this freedom of disposal. This

[56a] 8 Edw. 7, c. 68.

[57] [1949] 2 All E. R. 937 (Ch. D.).

[58] 15 Geo. 5, c. 19.

[59] As to whether government stock issued in lieu of stock comprised in a settlement forms part of capital or income, see *In re* Sechiari dec'd, [1950] 1 All E. R. 417, 419, distinguished in *In re* Winder's Will Trusts, [1951] 212 L. T. News 21, and applied in *In re* Kleinwort's Settlement Trusts, [1951] 212 L. T. News 22. See also *In re* Galway's Will Trusts, (1941) 65 T. L. R. 499.

was the case of companies to which government stock has been issued as compensation under the Coal Industry Nationalisation Act, 1946. This Act provided that compensation stock, when so issued, must not be sold or otherwise disposed of except by way of return of capital, on a winding up, for the purpose of satisfying the obligations of the company, or for the purpose of raising capital for the development of business; and when disposed of for such purposes, the stock would be free from any such restriction. These restrictions were, however, repealed by the Coal Industry Act, 1949.[59a]

A review of the measures relating to compensation shows that a variety of methods has been used by the legislature which bear little or no relation to each other. Apart from certain common matters such as the similar treatment of all property belonging to local authorities in the different acts which affect their interests, and the use of the Stock Exchange quotation as the main criterion of the valuation of securities, the methods of compensation differ in regard to each industry. Therefore, in concluding this review of the different statutory provisions relating to compensation for nationalized assets, the words of Lord Porter may be cited:

> . . . I do not find myself assisted by the provisions of other statutes or regulations dealing with the price to be paid for expropriated shares. Each contains its own terms and deals with questions incidental to the transfer of the particular interest taken over by the Government in specified industries. They follow no general principle and have no bearing the one on the other. Nor, when dealing with shares, do I find any useful analogy in the principle on which the value of land compulsorily acquired is to be determined.[60]

III

These provisions relating to the grant of compensation for the expropriation of assets are of great variety and diversity. Such characteristics, together with the complexity of their nature, might make it seem difficult, if not impossible, to make any general conclusions about them. But this is not so, since from the legal aspect it is possible to draw certain deductions applicable to all of them.

In the first place, the right to compensation which has been granted to disappropriated owners in all of these statutes relating to the nationalization of industries, is a legal right. It is conferred upon them by act of Parliament and can only be taken away from them by passing another act of Parliament for that purpose. This means that an owner can estimate the amount of compensation that he is likely to receive, by examining the terms of the statute as amplified by any regulations made thereunder.

But although the owners have this right to compensation, the grant of the compensation to them is purely arbitrary in the majority of cases in which it is awarded. As the provisions are embodied in an act of Parliament, the owners are precluded from challenging their validity in any court of law although any similar provisions

[59a] 12, 13 & 14 GEO. 6, c. 53.
[60] In Short v. Treasury Commissioners, [1948] A. C. 534, 544.

contained in a form of delegated legislation may, broadly speaking, be so contested.

Secondly, there does not appear to be any instance among the provisions reviewed in this essay of a right of appeal to a court of law conferred upon an owner whose assets have been compulsorily acquired by the state, against a decision or determination of a minister in regard to a matter relating to compensation. The most that these provisions allow in the event of an objection being made to a decision of the minister is an appeal to arbitrators especially appointed for the purpose. Such a right of appeal is, however, only given in particular cases, most of those cited in this essay being instances in which the legislature has refrained from including precise terms in an act of Parliament.[61]

Should, however, any board fail to carry out its duty of dispensing the compensation or exceed or abuse the statutory powers conferred upon it, then since all these statutory bodies are subject to the general law, there seems no reason why the appro- .o arbitration or has been determined by a referee, an arbitrator or referee may state or be required to state a case for the opinion of the court.[62] So, in these ways the courts acquire jurisdiction over these provisions relating to compensation.

Finally, these provisions relating to the award of compensation in respect of assets which have been expropriated by the state, though they are transitory in nature, are nevertheless of vital and of long-standing importance to both those persons who have received compensation for their loss and to the boards which are required to issue stock for the purposes of compensation. In the former case, the replacement of securities by government stock has a far-reaching effect inasmuch as although the capital may be replaced the income arising from the substituted stock is inevitably less than the former income by reason of the fixed rate of interest,[63] while in the latter case the boards are saddled with the responsibility of creating large amounts of stock for the purpose of satisfying the compensation. Thus one might say that both parties are required to bear a loss.

In conclusion, it is hoped that this essay upon the principle of compensation for the expropriation of property will be of some interest to readers abroad. Transitory though the provisions relating to compensation in respect of the recently nationalized industries may be, the principle of compensation for the expropriation of property is an integral part of the English legal and political system, and for that reason, alone, these provisions are worthy of research and consideration.

[61] See *supra* pp. 603, 605, 607, 611, 615.

[62] Cases may be stated to the Court of Appeal from tribunals set up under Transport, Electricity, and Gas Acts. As to cases stated by referees under Coal Industry Nationalisation Act, 1946, see *supra*, p. 608, and Studholme v. Minister of Fuel and Power, The Times, June 19, 1951, p. 2, col. 7.

[63] Interest in every case is determined at 3 per cent. All government stock issued by way of compensation is now quoted below par. There has therefore already been a capital depreciation in the amount of compensation awarded.

It might here be mentioned that the view of the Conservative Party towards the assessment and valuation of compensation is that it should be assessed so as to give compensation for the income of the disappropriated owner and not merely the capital value of his assets.

FINANCING THE NATIONALIZED INDUSTRIES

G. F. WHELDON*

I

Government spokesmen have frequently emphasized that their approach to the problems of nationalization has been based on the merits of each case. These indications of policy have usually been intended to apply to such broad questions as which industries should be nationalized or how they should be taken over, but a similar variety of approach is discernible in the more restricted field of the methods adopted for financing the industries once they have been taken over. To some extent these differences are attributable to the differing physical nature of each industry but the methods of acquisition and compensation, the choice of organizational forms and the price and profit policy followed, to which more extensive reference is made in other articles in this symposium, have also played their part.

In regard to the provision of finance, three nationalized undertakings have peculiar features. The Bank of England stands in a class apart, since the Act which nationalized the Bank made no provision for financing its subsequent operations nor for the publication of any report from which the methods adopted might be judged. The Bank has, as an act of grace, published an annual report each year since nationalization, but the information therein is somewhat meagre, and the value of the extensive real estate holdings, including the rebuilding and extensions now in progress, is not distinguished in the balance sheet. The absence of any reference to finance in the nationalizing Act or the new Charter is perhaps explainable by the facility with which a bank can create money by credit expansion. Indeed, the Bank of England, being the central bank of the country and not now in any way restricted by the size of its gold or other reserves, is able to create money at will. This ability, of course, is exercised only in close agreement with the broad lines of governmental financial policy as a whole, and in any event, the amount of new finance required annually by the Bank for its own purposes must be comparatively small and would certainly be dwarfed by the vast sums needed in other nationalized industries.

Another peculiarity concerns the airways corporations, for it was envisaged that, unlike other nationalized concerns, these might have to be operated at a loss, at any rate in the early years, and provision was made for subsidies from public funds. For each financial year the corporations are required to submit to the Minister of Civil Aviation estimates of their expected revenue and expenditure, and on the basis of these estimates and other information, the minister determines the amount, if any, of the grants which may be made to them from the Exchequer at the end of

* B. Com. (London). Assistant Manager, Intelligence Department, Midland Bank Limited, London.

the year. In practice, the minister has rarely completed his determination of these subsidies before the start of any financial year, but payments on account are permissible, even though the total is not settled, and these reduce the need to resort to temporary borrowing to cover operating deficits until the full Exchequer grants are received.

Thirdly, the National Coal Board had financial problems which other boards were spared in that, unlike them, it did not take over existing administrative facilities with banking accounts, cash balances, securities, and reserve funds, but had to start from scratch, receiving its initial working funds as an advance from the Exchequer and building up its own financial organization. In the other industries, the whole of the assets and liabilities were taken over on the appointed days and the new bodies were therefore able to have immediate access to substantial financial resources or facilities provided by the former owners. The British Transport Commission, for example, took over bank balances and marketable securities amounting to over £200 millions. These large liquid reserves had arisen mainly as a result of the abnormal conditions during the war when expenditure on railway maintenance was drastically curtailed even though financial provision continued to be made. The figures for other industries, though less spectacular than for transport, were also substantial. The British Electricity Authority took over from absorbed undertakings salable securities valued at over £44 millions and net cash and bank balances of £4½ millions, though it also inherited net bank overdrafts of £17 millions in respect of the absorbed local authority undertakings. The initial figures for the gas industry have not been published, but it is known that several of the absorbed undertakings had substantial liquid resources immediately prior to the vesting date and the area gas boards still had over £8 millions worth of securities at the end of their first accounting period. For the Transport Commission these initial resources have thus far been sufficient to meet all capital and maintenance expenditures and large payments for the voluntary acquisition of road transport undertakings as well as the current losses on railway operations. For the other bodies additional finance has had to be provided since vesting day and, as all nationalized undertakings—including the Transport Commission—are likely to require large amounts of new capital over the next decade or so, the methods of providing this finance are of considerable importance, particularly in an economy where capital resources are already strained. It may be estimated that the nationalized undertakings are at present responsible for over £300 millions of the gross capital formation of about £2,300 millions a year.

In the various nationalization measures, Parliament has specifically eschewed detailed control over the day-to-day running of the various industries, but ministerial control is effectively exercised over the broad lines of capital development and finance. Proposals for new development, and also some of those for the renewal or maintenance of existing physical works, are submitted annually by each industry in broad aggregates to the Investment Programmes Committee, the coordi-

nating authority set up by the Government to exercise oversight over capital expenditure in general. Within the broad limits laid down and revised from time to time by this Committee, the appropriate minister determines the general lines of the development program for each industry. The legislative limitations on borrowing powers, whether short- or long-term, have in all instances provided that the powers shall be exercised only with the consent of the minister and with the approval of the Treasury. For short-term borrowing the usual procedure has been to give a general authorization with an overall limit on the amount at any time outstanding, but for long-term borrowing the consents and approvals are given specifically on each occasion. The Treasury was required by the original nationalization acts to guarantee the principal and interest in respect of all stocks issued for the compulsory acquisition of assets then taken over, but for subsequent short- and long-term borrowing such guarantees were permissive and not mandatory. In practice, however, Treasury guarantees have been given for almost all borrowing except internal or inter-group finance. The guarantees for short-term borrowing from the banks are generally cancelled when repayment of the overdrafts is made out of the proceeds of long-term issues.

II

For working capital and other short-term requirements the financial arrangements have been comparatively simple, since the large banks with their nation-wide network of branches are well able to meet the needs even of such large borrowers as the British Electricity Authority, especially as all borrowings from the banks are supported by a specific Treasury guarantee. In two of the earlier nationalization measures limits were placed on the amounts of short-term borrowing (coal £10[1] millions; transport £25 millions); in the others no specific limits were placed on short-term finance, but an overall limit was set for all forms of new borrowing (British Overseas Airways Corporation £60 millions, British European Airways Corporation £20 millions, British Electricity Authority and the area boards £700 millions, North of Scotland Hydro-Electric Board £100 millions, Gas Council and its area boards £250 millions, the Iron and Steel Corporation of Great Britain and its companies £350 millions). In general, nationalization has resulted in a considerable reduction in the number of separate banking accounts required, though the aggregate turnover has probably continued to expand. Technical arrangements were made, by voluntary agreement between the banks and the central authorities of each nationalized industry, for the banking business, including credit accounts as well as overdrafts, to be spread over all the leading banks roughly in the same proportions as they had shared the banking business of the absorbed undertakings, though exceptional, short-term bank borrowing by the airways corporations has been concentrated on one bank. In general, the tendency has been to concentrate the borrowing or principal credit balances into a

[1] This limit was raised to £20 millions by the Coal Industry Act 1951, 14 & 15 GEO. 6, c. 41.

few central accounts, usually held in London, and to operate small credit accounts for local purposes in other parts of the country.

Resort to the banks for short-term finance, though usual, is not obligatory. The National Coal Board, for example, has obtained its working capital in the form of advances from the Minister of Fuel and Power, the bank "overdrafts" recorded in its balance sheet as at December 31, 1949 being nominal in the sense that they represented the effect which would have been produced had all outstanding cheques been presented for payment rather than actual accommodation granted by the banks. In 1947 and 1948 British Overseas Airways Corporation used temporarily surplus funds to make large loans at short call to the two other airways corporations (subsequently, one of these was amalgamated with B.O.A.C.). The Transport Commission in 1949 exercised part of its temporary borrowing powers in order to obtain £1½ millions at short call from the London Electric Transport Finance Company, which is a special corporation formed in 1935 under official auspices to lend money primarily for railway electrification in the London area. The Gas Council borrows from area gas boards which have temporarily surplus cash balances and re-lends to other area boards which are in need.

III

When we turn to the provision of long-term capital, a somewhat greater variety of method is observable. For the coal industry the only source permitted by statute is the Ministry of Fuel and Power. The limit set by the original Act was[2] £150 millions for the first five years, *i.e.*, up to July 12, 1951, and the net amount so borrowed by April, 1951, including sums for working capital and allowing for repayments, was just under £33 millions. This figure, incidentally, is much lower than that recorded as issues under the Act in the "below-the-line" section of the Exchequer return (the weekly record of Government receipts and payments), since the greater part of these cash issues has been in respect of compensation to former colliery owners for particular assets transferred to the Coal Board at the beginning of 1947. Long-term borrowing by the airways corporations has been by way of issuing blocks of Airways Stock to the National Debt Commissioners. The British Transport Commission has had no occasion to make use of its borrowing limit of £250 millions for ordinary capital development, since, as indicated above, it inherited a wealth of cash and marketable securities from the undertakings it absorbed in 1948; but £25 millions of British Transport 3 per cent Guaranteed Stock 1968-73 was issued to Thomas Tilling Ltd. in 1948 as consideration for the voluntary transfer of Tilling's interests in road haulage and passenger undertakings, and by the end of 1950 other negotiated acquisitions of road passenger undertakings had resulted in the issue of nearly £25 millions more of this stock.

In the electricity industry, the principal method adopted to provide long-term

[2] This limit has been raised to £300 millions without any expiring date by the Coal Industry Act, 1951. See note 1 *supra*.

finance has been initially to borrow the sums required from the banks and, when the total became large, to make a funding issue to the general public. The borrowing is in the name of the British Electricity Authority though the funds are used not only for its own purposes, mainly generation and bulk transmission, but also, by process of re-lending, for the purposes of the area boards which are concerned mainly with detailed distribution to consumers. Temporary borrowing, from the banks and other sources, rose to nearly £50 millions by October 1948 when a public issue of £100 millions of British Electricity 3 per cent Stock 1974-7 was made at 99½. The proceeds were used to repay the temporary borrowing and to finance the still growing expenditure on new capital development. This growth of expenditure was such that by May 1950 the Authority was once more "in the red" at the banks to the extent of about £65 millions. The amount of British Electricity Stock then issued to the public was £150 millions, but the terms were somewhat less favorable to the borrower, the interest rate being 3½ per cent, the issue price 99, and the redemption dates 1976-9. The North of Scotland Hydro-Electric Board has adopted a broadly similar method of financing capital development. Initially, funds are obtained at short-term, mainly from the Scottish banks, and at intervals refunding is undertaken. It is generally believed that the first public issue, in July 1947, of £5 millions of 2½ per cent Guaranteed Stock 1967-72 at par, was fully taken up only as a result of heavy subscriptions by the Scottish banks themselves, and it is perhaps significant that the four subsequent issues, together amounting to £37 millions of 3 and 3½ per cent Guaranteed Stocks at par or just over, were all made to the National Debt Commissioners.

In the gas industry the "normal" method of providing long-term finance appears to be similar to that adopted for electricity, but one point of difference may be noted. The degree of decentralization in the control and management of the gas industry is greater than for electricity, and temporary borrowing to finance capital construction may be undertaken by the Area Gas Boards, as well as by the Gas Council, but only the Council may issue British Gas Stock. The first issue of British Gas Stock, apart from the compensation stocks to the former owners, was made in May 1949 to the National Debt Commissioners, in the form of £40 millions of 3 per cent stock at 100½ redeemable 1990-5. The second issue, in July 1951, was of £75 millions of 3½ per cent stock at 98 redeemable 1969-71, and was made to the general public. At the time of the issue the Gas Council had banks' overdrafts amounting to just over £48½ millions.

The time that has elapsed since the take-over of the iron and steel industry has been too short to determine the "normal" method of providing finance, but special features are likely to arise as a result of the decisions to maintain the existing company structure of the industry rather than to transfer the ownership of the physical assets to specially created boards, and to give certain creditors of the companies—particularly the Finance Corporation for Industry—the right to demand early re-

payment of their loans. So far the Iron and Steel Corporation has made no long-term issue, but a Treasury guarantee has been given in respect of short-term borrowing up to £20 millions from the banks.

The National Debt Commissioners, already referred to on several occasions as subscribers to large amounts of the stocks of nationalized undertakings, are a long established public body, charged with the investment of the surplus resources of the post office and trustee savings banks, the national insurance funds, and other public institutions. In general the terms of issue to them have corresponded closely with the stock exchange quotations for comparable direct government obligations. The various stocks taken up by the Commissioners from time to time are not necessarily held by them in perpetuity; indeed, there is evidence to suggest that for some stocks they act rather in the manner of underwriters or investment bankers, taking up the whole of an issue and then retailing it out to the big institutional and other permanent buyers as opportunity offers.

IV

So far we have described the main methods of finance undertaken within the specific borrowing powers laid down by legislation, but, in addition, the nationalized undertakings are pursuing a considerable measure of self-finance out of their own reserves and other internal funds. The first report of the British Electricity Authority, for example, stated that

> moneys set aside by the Authority and Boards as annual provision for depreciation of assets, or discharge of their capital expenditure, and other corporate savings such as revenue surpluses and reserves, provide supplementary sources from which capital expenditure may be met.

In so far as conservative estimates of the life of plant are adopted and liberal provision is made for depreciation, it is likely that considerable sums will be available each year for new capital investment over and above the replacement of worn out or obsolete assets, especially as the electricity industry is still in a phase of rapid expansion. Total provisions for depreciation and writing off intangible assets exceeded £64 millions in the two years to March, 1950; three-fifths of this was used to repay various capital liabilities and the remaining £26 millions was available for financing new construction. In addition, both the Central Authority and the Area Boards are required to establish and maintain reserve funds, and in the first two years the net sums thus set aside amounted to about £8 millions, while the amount carried forward was about £2½ millions. The Transport Commission, too, has set aside large annual sums for depreciation—£21 millions in 1948, £24¾ millions in 1949 and £28¾ millions in 1950—but as its main sphere of activity, the railway system, is no longer rapidly expanding, most of the provisions have had to be used to replace the large volume of existing worn out assets, rather than to finance further expansion. For the coal industry, the Ministry of Fuel and Power has said that the

National Coal Board is expecting to finance out of its depreciation provisions as much as three-quarters of its projected gross capital expenditure of £635 millions over the next fifteen years.

The extent to which self-finance can be practiced should not, however, be exaggerated, since all the nationalized industries are subject to the same taxation as similar private enterprises, and are therefore likely to experience similar difficulties in setting aside substantial sums out of current earnings for expansion. The Commissioners of Inland Revenue may be expected to disallow excessive provision for depreciation, while the high level of income and profits taxes will make the accumulation of substantial reserves a somewhat expensive procedure and likely to invite criticism from those who would prefer an immediate lowering of charges to the consumer. Even the "initial depreciation allowances," which so greatly benefit rapidly expanding industries, such as the Electricity Authority, in the earlier years, are merely tantamount to interest-free Treasury advances over the life of the respective assets, and the Chancellor of the Exchequer has given notice that they are to be suspended from April, 1952, to lessen competition with the rearmament program.

Regulations made under the various nationalization measures provide, in effect, for the gradual redemption of the stocks issued for the acquisition of assets or the raising of new money. This redemption of the stocks was intended to be distinct from and additional to the provisions made for the physical depreciation of assets, but for electricity and the airways corporations ministerial acquiescence has been obtained to treat the depreciation charges as sufficient amortization provision. In general, the period fixed for amortization is 90 years from the date of issue of the stock and the rate of interest to be assumed for redemption fund purposes is 3 per cent.[3] The redemption funds are invested in marketable securities, usually British Government securities, and are not available for directly financing capital development of the undertakings, though by increasing the demand for government and government-guaranteed stocks in general they improve the prospects of placing the undertakings' own stocks.

A somewhat different method of amortization has been laid down for the coal industry. In accordance with the provisions of the original Act, the net expenditure of the National Coal Board has been met from funds provided by the Ministry of Fuel and Power. The practice has been for the Board to draw on the Ministry for sums required throughout the year, interest being charged at ½ per cent on the ground that it is short-term finance, and immediately after the end of the year to fund these temporary advances into a single amount to be repaid by a terminable annuity of fifty equal annual instalments, the interest rate used for the calculations being the then current rate for long-term borrowing. Similar funding and repay-

[3] The "life" of most of the stocks is much less than 90 years, and they will therefore have to be renewed or replaced by other issues at least once before final extinction under the amortization provisions.

ment provisions apply to the compensation stocks issued or to be issued to former colliery owners, the Board being required to make fifty annual payments to the Ministry from the year of issue of each stock. The rate of interest used for the annuity calculations was 2½ per cent in respect of advances received and stocks issued before December 31, 1947, 3 per cent for those in 1948 and 1949, and 3½ for 1950. The capital portion of the annuities is used by the Treasury for repayment of government debt, and therefore like the redemption funds of the Transport Commission, may be regarded as lending support to the gilt-edged market.

Among other sources of internal finance available to the nationalized industries perhaps the most important, judged by amount, are the deposits by staff savings banks and staff superannuation funds which the British Transport Commission inherited from the railways. The savings bank deposits, amounting at the end of 1950 to £43 millions, are in the form of borrowings from the staff at short-term, though in fact the total outstanding is not likely to fluctuate substantially from year to year. The superannuation deposits also, amounting to £75 millions at December 31, 1950, are morally, if not legally, funds belonging to employees. They do not include the whole of the superannuation funds, since some of these are invested by the trustees in other securities, but, so long as the practice is continued of investing a large proportion of the accruing funds within the organization, the Transport Commission can apparently count upon a growth of between £1 and £2 millions each year in the total which is available for long-term finance. In other nationalized industries the amount of superannuation funds invested within the business is comparatively small, and in all newly created schemes the practice has been to invest annual surpluses in other securities. Prepayments or deposits by consumers, as an earnest of good faith in settlement of accounts, are another form of finance available to some of the industries, notably electricity and gas, but, again, the amounts involved are relatively small and no substantial annual increase can be counted upon; indeed, some of the area boards are discontinuing the practice of requiring such prepayments and deposits. Another source of finance available to some of the nationalized industries has been the sale of assets taken over from the absorbed undertakings and not required for the purposes of the new body; the National Coal Board, for example, realized about £12 millions from the sale of railway wagons and the Transport Commission over £100 millions from the sale of securities in 1949 and 1950. These sales of inherited assets are naturally a non-recurring source of finance.

V

In addition to securing additional finance for new investment, some of the nationalized industries have been faced with special problems arising from the methods of compulsory acquisition of the absorbed undertakings. For the Bank of England, special Treasury stock was created to give an annual income yield

equal to that which former stockholders had received in each of the preceding twenty years; for the collieries the compensation stock is being issued on the basis of the capitalized value of the net maintainable income of the industry as a whole; for the railways, electricity, gas, and iron and steel, the capital amount of the compensation stocks was based on stock exchange values of the stocks and shares of the absorbed undertakings or on a negotiated figure where no stock exchange quotation was available. With the exception of the Bank of England, therefore, all the nationalized undertakings have been faced with accountancy problems in incorporating the capital liability on compensation stocks into balance sheets in which assets have been brought in at their former book values. In general, the problem is being solved by revaluation of the assets or by opening special adjustment accounts to represent the difference—whether surplus or deficit—at the time of acquisition. In so far as the stock exchange valuation of the former securities was a valid appraisal of their long-term real value the industries should not be faced with difficulty in meeting the annual interest commitment, especially as the rates payable on the compensation stocks are comparatively low; but if the revenue actually earned should fall appreciably short of the interest commitment, a question of public policy would arise as to the method of meeting the persistent deficit. The problem seems most likely to arise in the Transport Commission where the railway section is experiencing difficulty in paying its way. If the Commission is to be financially self-supporting, as is required by the Transport Act, 1947, the deficit might have to be met by increasing charges in other sections. The road haulage or road passenger section, for example, might be required in effect to subsidize the unprofitable railway section. Such a procedure, however, would be likely to arouse strong criticism from those consumers who would be called upon to pay more, and, already the Federation of British Industries has submitted a memorandum to the Minister of Transport proposing that part of the cost of maintaining Britain's railways should be charged to defence votes, on the grounds that many uneconomic lines and services have to be maintained for possible use in time of war.

VI

To summarize the methods adopted in practice to finance Britain's nationalized industries, it may be said that the industries are first expected to use their own resources of inherited funds or reserves set aside out of current receipts. If these are insufficient to meet approved expenditure, the government—by direct advances, by Treasury guarantees of borrowing from the public or the banks, or by arrangements with the National Debt Commissioners—gives them access to other funds on terms as favorable as those available to the government itself. Practically the whole of their finance, including the compensation stocks issued originally in respect of absorbed undertakings, is in the form of debt bearing fixed rates of interest, whereas in the absorbed undertakings much of the finance required had been pro-

vided as equity capital receiving a variable return. The method of debt finance contributes in part towards the solution of the problems raised by the changing nature of the ownership of savings in Great Britain. In the nineteenth century capital was provided by a comparatively small number of wealthy men who were prepared to incur considerable risks in the hope of large gains; whereas in the changed circumstances of the twentieth century much money for development has to be obtained from the smaller saver or the institutional investor, both of whom probably regard security of capital as of greater importance than high, though variable, returns. The methods of finance adopted do not mean, however, that the risks inherent in all business enterprise have been eliminated from the nationalized industries; they have, in effect, been transferred to the community as a whole, either in the form of Exchequer-financed subsidies or by incorporation into the prices charged for the goods and services rendered. The private saver has become a pure rentier and the taxpayer or consumer a willing or unwilling holder of the equity.

FINANCE OF NATIONALIZED INDUSTRIES*

(figures in brackets show net figure after redemptions, cancellations, etc.)

Industry, with Date of Transfer to Public Ownership	(Nominal amounts in £ millions) Gross issues to compensate former owners	Issues to raise additional long-term capital	Bank borrowing sanctioned or other temporary finance	Notes
Bank of England (March 1, 1946)	58.2	.....	.....	3 per cent Treasury Stock issued on March 1, 1946 at par and redeemable after 1966 at Treasury option. The Bank of England makes half-yearly transfers to the Treasury to meet the interest.
British Overseas Airways Corporation (April 1, 1940; scope of operations broadened from April 1, 1946)	.....	4.25 (3.0)	.....	3 per cent Guaranteed Airways Stock 1960-70 issued for cash to National Debt Commissioners in March 1940 at 95 (£1,250,000 has been redeemed).
		5.75 (5.3)	.....	2½ per cent Guaranteed Airways Stock 1971-76 issued for cash to National Debt Commissioners in June 1946 at 99 (£450,000 has been redeemed).
		10 (9.4)	.....	2½ per cent Guaranteed Airways Stock 1977-82 issued for cash to National Debt Commissioners in January 1947 at 101½ (£600,000 has been redeemed).
		18	.....	3 per cent Guaranteed Airways Stock 1980-83 issued for cash to National Debt Commissioners in February and March 1949 at par (including £3½ millions originally issued by British South American Airways Corporation).
			5	Amount for which Treasury guarantees have been given, though the whole amount may not have been taken up.
British European Airways Corporation (August 1, 1946)	.....	6	.....	3 per cent Guaranteed Airways Stock 1980-83 issued for cash to National Debt Commissioners at par in 1949.
			2.0	Amount for which Treasury guarantees have been given, though the whole amount may not have been taken up.
National Coal Board (January 1, 1947)	164.7	.....	.....	Global award for "coal industry assets" transferred to Board on January 1, 1947 from former owners. By June 1951 only about £66 millions had in fact been satisfied by the issue of 3½ per cent Treasury Stock 1977-80. In addition compensation will be paid for other assets etc., which were taken over by the Board. These include coke-ovens, brickworks, interests under freehold leases, etc., but their value has not yet been determined.
	78.5 (75.1)	.....	.....	2½ per cent Treasury Stock 1986-2016 issued in exchange for Coal Commission Stock in respect of mineral rights and other fixed assets of the Coal Commission. By December 31, 1950 £3.3 millions had been redeemed or repaid.
	69.1 (67.0)	.....	.....	Other compensation moneys, issued mainly in cash by the Minister of Fuel and Power, and chargeable to the Board as capital liabilities. £2.1 millions had been repaid by December 31, 1950.
		41.1 (32.5)	.....	Cash advances made by the Minister of Fuel and Power to the Board. By December 31, 1950, £8.6 millions had been repaid and at that date over £36 millions was temporarily deposited by the Board with the Minister.
Cable and Wireless (January 1, 1947)	31.4	.....	.....	The shares of the company were transferred to public ownership on January 1, 1947 and the gross amount of compensation was fixed in February 1949 at £35.25 millions. Excluding the shares already held by the Treasury the value of the remainder was £32.2 millions. Compensation was satisfied by the creation of £31.4 millions of 3 per cent Savings Bonds (£15.68 millions of 1960/70 tenor and £15.76 millions of 1965/75 date) issued at slightly over 102.

*Position at mid-July, 1951.

FINANCE OF NATIONALIZED INDUSTRIES (Continued)

Industry, with Date of Transfer to Public Ownership	(Nominal amounts in £ millions) Gross issues to compensate former owners	Issues to raise additional long-term capital	Bank borrowing sanctioned or other temporary finance	Notes
British Transport Commission (January 1, 1948)	1,053.8 (1,052.4)	.....	.....	3 per cent Guaranteed Stock 1978-88 issued to holders of securities in former railway and canal companies and in the London Passenger Transport Board. £1,400,000 of stock has been subsequently cancelled.
	12.9	.....	.....	3 per cent Guaranteed Stock 1967-72 issued to holders of London Passenger Transport Board securities which already enjoyed a Treasury guarantee.
	115.7 (113.7)	.....	.....	3 per cent Guaranteed Stock 1968-73. £44 millions issued to former owners of railway wagons and £71.7 millions for various road passenger and transport interests. £2 millions of stock was subsequently cancelled.
	67.2	.....	.....	Loans made by two government-sponsored corporations formed in 1935, the liability being taken over by the Commission on vesting date. The loan of £40.2 millions from London Electric Transport Finance Corporation is repayable in 1950-55 and the £27 millions loan from Railway Finance Corporation is repayable 1951-52.
	12.2	.....	.....	Estimated sum payable for road haulage undertakings compulsorily acquired by the Commission and to be satisfied, when finally determined, by the issue of British Transport Stock.
			1.5	Temporary borrowing at short call from London Electric Transport Finance Corporation.
British Electricity Authority (April 1, 1948)	344.0 (340.8)	.....	.....	3 per cent Guaranteed Stock 1968-73 issued in April/August 1948 to holders of securities in former electricity undertakings. £3.2 million was subsequently cancelled.
	1.1 (.81)	.....	.....	Special issues to holders of securities which already enjoyed Treasury guarantees. £250,000 has been redeemed.
	176.5 (149.8)	.....	.....	Effective capital liability of B.E.A. in respect of local authority undertakings acquired on nationalization. The debts remain in the name of the authorities, but the annual service is met by B.E.A.
	23.6 (17.1)	.....	.....	Other capital liabilities assumed by B.E.A.
		100	.....	3 per cent Guaranteed Stock 1974-77 issued to public for cash in October 1948 at 99½.
		150	.....	3½ per cent Guaranteed Stock 1976-79 issued to public for cash in May 1950 at 99.
			40	Amount for which Treasury guarantees have been given, though the whole amount may not have been taken up. The borrowing is spread over all the leading banks.
North of Scotland Hydro-Electric Board (Formed in 1943 but scope extended by Electricity Act, 1947)	8.5	.....	.....	Estimated liability to be satisfied by issue of NSHEB stock, for undertakings transferred in 1947 by B.E.A., which issued its own stock to former owners. Not included in grand totals.
	.....	5	.....	2½ per cent Guaranteed Stock 1967-72 issued to public for cash in July 1947 at par.
		6	.....	3 per cent Guaranteed Stock 1968-70 issued to National Debt Commissioners in July 1948 at par.
		6	.....	3 per cent Guaranteed Stock 1968-70 issued to National Debt Commissioners in October 1948 at 101.
		10	.....	3 per cent Guaranteed Stock 1989-92 issued to National Debt Commissioners in four tranches during 1949 at par.
		15	.....	3½ per cent Guaranteed Stock 1977-80 issued to National Debt Commissioners in August 1950 at par.
			7.5	Amount for which Treasury guarantees have been given, though the whole amount may not have been taken up. The borrowing is spread over all the leading Scottish banks.

FINANCE OF NATIONALIZED INDUSTRIES (Continued)

Industry, with Date of Transfer to Public Ownership	(Nominal amounts in £ millions)			Notes
	Gross issues to compensate former owners	Issues to raise additional long-term capital	Bank borrowing sanctioned or other temporary finance	
The Gas Council (May 1, 1949)	188.8	.....	.....	3 per cent Guaranteed Stock 1990-95 issued to holders of securities in former gas undertakings. The final amount is not yet known as some securities have not yet been valued, but further issues are not expected to be large.
		40	.....	3 per cent Guaranteed Stock 1990-95 issued for cash to National Debt Commissioners at 100½ in May, 1949.
		75	.....	3½ per cent Guaranteed Stock 1969-71 issued to public for cash in July, 1951, at 98.
			50	Amount for which Treasury guarantees have been given, though the whole amount may not have been borrowed. The borrowing is spread over all the leading banks.
	28.5	.....	.....	Effective capital liability, to be subdivided among the area boards, in respect of local authority undertakings acquired on nationalization. The debts remain in the name of the authorities, but the annual service is met out of funds provided by the area boards.
	8.9 , (7.4)	.....	.....	Other capital liabilities assumed by the Gas Council or the area boards.
Iron and Steel Corporation of Great Britain (Feb. 15, 1951)	231.6	.....	.....	3½ per cent Iron and Steel Guaranteed Stock 1979-81 issued at par to holders of securities in companies nationalized on February 15, 1951. The final amount is not precisely known as some securities have not yet been valued, but the outstanding amount is relatively small.
	.....	.....	20	Amount for which Treasury guarantee has been given, though the whole amount may not have been taken up. The borrowing is spread over all the leading banks.

SUMMARY OF PERMANENT FINANCE

	(£ millions)
Gross issues to former owners of nationalized undertakings	2,451.7
Other capital liabilities for purposes of compensation (see notes)	215.0
	2,666.7
Less redemptions, cancellations, etc.	47.1
Net compensation liabilities	2,619.6
Gross issues of long-term stock for cash	492.1
Less stock redeemed, cancelled, etc.	10.9
Net long-term issues for cash	481.2

SELECTION AND TRAINING FOR MANAGEMENT IN BRITISH NATIONALIZED INDUSTRIES†

REGINALD W. BELL*

I

INTRODUCTION

Prominent among the ideas underlying the nationalization of British industries is the conception that, by means of nationalization, the workers in the industry are able to share in its ownership. This doctrine has long been advanced by those who hold that a man working for a private company and having no share in the ownership of that company may be working merely to increase the profits of the shareholders and is in danger of exploitation. The degree to which the worker in a nationalized industry can, as a practical matter, be said to share ownership in it may appear exaggerated, but the doctrine has been successfully preached for so long in Great Britain that it has received wide acceptance among those to whom the socialization of industry has a strong appeal. There is no doubt that for many rank and file and other employees satisfying psychological consequences flow from the initial process of nationalization. At the moment it takes place a proprietary outlook develops, and indeed this feature was the keynote of many humorous cartoons in most sections of the British press for some weeks after nationalization of the railways.

In those activities, *e.g.*, broadcasting, which have been national from the outset, any desire on the part of those who work in the organization to feel a proprietary sense towards it has presumably been met from the beginning. It is, therefore, in relation to industries which have formerly been carried on under private enterprise that the desirability of satisfying the proprietary feeling among the employees has been most strongly urged. In such industries as coal, transport, and steel, advocates of nationalization expected to see conspicuous benefits in this respect from the change.

The owners or proprietors of an undertaking are traditionally considered to be the persons most interested in its efficiency and success. When, therefore, an industry is nationalized and the employees receive some share in the ownership, an added interest in the efficiency of the concern should be conferred upon them. It can

† *Author's Note.* The author is indebted to leading officers of the organizations mentioned in part II of this article for the facts on which that part is based. The remainder of the article contains material for which the author alone is responsible, and the views therein expressed must not be taken as representing those of the Administrative Staff College or any organization mentioned in the article.

* LL.M. 1928, University of Liverpool. Of the Inner Temple, Barrister-at-Law. Senior Member of Directing Staff, the Administrative Staff College, Henley-on-Thames. Joint author (with the late Sir Gwilym Gibbon) of HISTORY OF THE LONDON COUNTY COUNCIL, 1889-1939 (1939). Member of Council, The Institute of Public Administration.

also be expected that this interest will take a personal form: each person serving in the industry will wish to play his full part in improving the efficiency of the undertaking and will take every step to further his own knowledge in order to contribute more to the common good. Two things follow: first, that the organization must provide every facility for its employees (of all ranks) to obtain the necessary training and education; and second, that the road to advancement should be the demonstration of ability to assume further responsibility. It is only if this broad conception of the place of the individual in relation to the efficiency of the organization and the opportunity it affords for personal development and promotion is given reasonable reflection in practical arrangements that the proprietary sense, which it is an aim of nationalization to foster among employees, can gain full satisfaction.

It is not surprising, therefore, that, in all Acts of the British Parliament which provide for the taking over by public corporations[1] of great industries, there is specific provision for the training and advancement of those who are engaged in them. The provisions differ, but the general principle is the same. The corporations are obliged (in one case empowered) to provide training and education, those terms being unqualified, and presumed, therefore, to imply all kinds of training and education, whether technical, administrative, or otherwise, and to relate to all levels of the organization. It is worth while comparing shortly the terms of the various Acts. They are given in date order.

A. Coal Industry Nationalisation Act, 1946

The National Coal Board is required to carry on activities conducive to advancing the skill of persons employed or to be employed for the purposes of any of its activities, or the efficiency of equipment and methods to be used therefor, including the provision by the Board itself, and its assisting the provision by others, of facilities for training, education, and research.[2] The Board is further required, in the exercise and performance of its functions as to training, education, and research, to act on lines settled from time to time with the approval of the Minister of Fuel and Power.[3]

B. Transport Act, 1947

The Transport Commission is given power to do anything for the purpose of advancing the skill of persons employed by the Commission or the efficiency of the equipment of the Commission or of the manner in which that equipment is operated, including the provision by the Commission, and the assistance of the provision by others, of facilities for training, education and research;[4] and is required, in the exercise and performance of these functions, to act on lines settled

[1] Throughout this article the phrase "public corporation" is used in the specialized British sense of bodies answerable in some degree to the public at large and set up as national bodies. It is not intended to include either local government bodies or limited liability companies.

[2] Coal Industry Nationalisation Act, 1946, 9 & 10 GEO. 6, c. 59, §1(2)(f).

[3] *Id.* §3(3).

[4] Transport Act, 1947, 10 & 11 GEO. 6, c. 49, §2(2)(b).

from time to time with the approval of the Minister of Transport.[5] These powers can be delegated to the Executives set up to assist the Commission, and have in fact been so delegated.[6]

C. Electricity Act, 1947

The British Electricity Authority and every Area Board are obliged to make, in consultation with an organization appearing to them to be appropriate, provision for advancing the skill of persons employed by them, and for improving the efficiency of their equipment and the manner in which that equipment is to be used, including provision by them, and the assistance of provision by others, of facilities for training and education.[7] The British Electricity Authority and the Area Boards in the performance of their functions as to training and education are to act in accordance with a general program settled from time to time in consultation with the Minister of Fuel and Power.[8]

D. Gas Act, 1948

All Area Boards set up under this Act are obliged, in consultation with any organization appearing to them to be appropriate, to make provision for advancing the skill of persons employed by them, including the provision by them, and the assistance of the provision by others, of facilities for training and education.[9] They are further, if so required by the Gas Council, to submit from time to time to that Council programs showing the provision to be made by them in fulfilment of the obligation set out above; and it is the Council's duty to co-ordinate those programs and settle from time to time, in consultation with the Minister of Fuel and Power, a general program for these matters, to which the Area Boards must give effect.[10]

E. Iron and Steel Act, 1949

There does not appear to be an express provision in the Act requiring the Iron and Steel Corporation of Great Britain to undertake training and education. Presumably it is one of the powers included in the very wide provisions of Section 2(4) of the Act,[11] and this inference is confirmed by the terms of Section 4(3) of the Act, which provides that, in making or securing provision for the training and education of persons employed by the Corporation or any publicly owned company, the Corporation shall act in accordance with a general program settled from time to time with the approval of the Minister of Supply. Section 3(1)(c) of the Act imposes on the Corporation a positive duty to decentralize.

The most noticeable variation in the provisions above quoted is the progressive

[5] *Id.* §4(3).
[6] *Id.* §5; and BRITISH TRANSPORT COMMISSION REPORT par. 10 (1948).
[7] Electricity Act, 1947, 10 & 11 GEO. 6, c. 54, §§2(2) and 6(2).
[8] *Id.* §5(3).
[9] Gas Act, 1948, 11 & 12 GEO. 6, c. 67, §4(1). [10] *Id.* §4(2).
[11] Iron and Steel Act, 1949, 12 & 13 GEO. 6, c. 72, §2(4) reads: "The Corporation shall have power to do any thing . . . which in their opinion is calculated to facilitate the proper carrying on of their activities or the proper exercise of their powers under the preceding provisions of this section."

decentralization of power to perform the functions. This feature reflects the growing experience of the operation of nationalization in Great Britain and the need to avoid the dangers of over-rigidity inherent in very large unitary organizations. No doubt the decentralized provisions of the later Acts will be found to make the planning of training and educational arrangements easier, and, particularly, to facilitate variations to meet local needs. Why, in the case of the Transport Act, only a power is conferred whereas in other cases a duty is imposed, is not easy to explain.

The essence, however, of all the provisions is the presumable intention of Parliament that no one serving in any of these organizations should feel that he is employed by a body within whose service training and advancement for the individual are not given special consideration. There may be good reason to suppose that the inclusion of these provisions was closely linked with the feelings which employees in particular industries were said to entertain before nationalization—feelings of frustration and uncertainty about their future. The absence of such express provisions in some other nationalization Acts has already been commented on. There is no such provision in the Bank of England Act, 1946,[12] possibly because the purposes of the Bank of England have always been so closely associated with service to the nation as a whole that no such feeling as was attributed to employees in other nationalized industries developed in the Bank of England. Again, no such provision was made in, or has since been introduced into, the legislation which governs the Airways Corporations.[12a] Nor, again, do we find provisions of this kind in the Overseas Resources Development Act, 1948.[13]

The only point made here, of course, is the absence of an *express* requirement. It by no means follows that provision for training and advancement of employees within these last mentioned bodies is not adequately made. The existence of an express power or mandatory duty, however, in the other cases does seem to have resulted in parts of the annual reports of the public corporations concerned being devoted to a description of their training and educational arrangements, and it seems likely that these parts will grow more substantial. In other cases it is not possible to glean from the annual reports what is being done in this matter as a whole: references are chiefly confined to improvement of technical skill in some sections of the staff, *e.g.*, the training of flying and technical ground personnel in the Airways Corporations or the training and development of native employees overseas in the case of the Overseas Food Corporation. It must be admitted that, from the point of view of public enlightenment, express statutory requirement about training and education for employees has a wholesome and stimulating influence.

In this article it is proposed to make particular reference to training for higher management. The higher management of a concern is in a more healthy condition

[12] 9 & 10 GEO. 6, c. 27.

[12a] Air Corporations Act, 1949, 12, 13 & 14 GEO. 6, c. 91.

[13] 11 & 12 GEO. 6, c. 15. This Act set up the Overseas Food Corporation and the Colonial Development Corporation.

if the arrangements for training and progress at all levels are in good order. For this reason some account is given of provisions made at lower and intermediate levels. A continuous and well-regulated flow of individuals with varied qualifications, from whom the higher ranks of the organization can be recruited, can be ensured only by careful planning. In filling high posts it is wise, and customary in the British public services, to consider the available field of candidates from outside. It follows, therefore, that the methods of training and education used within the organization must be such as to secure that those who come up internally with claims for appointment to high-level posts shall have had at least as good past opportunities to equip themselves as are available to outsiders against whose competition they must stand. This calls for a deliberate policy of suitable internal transfers to widen the experience of the individual. In the interests of a contented and therefore efficient staff, the process cannot start too early, and a scheme whereby promising individuals are, from an early stage in their career, given an opportunity of finding their way up the ladder is specially important in very large organizations where the numbers and extent of the staff may otherwise create blocks of individuals for whom outlets by way of promotion are inadequate. It is a corollary, too, of such a scheme that the organization should contemplate at different stages some loss of promising individuals through their gaining employment elsewhere. In the case of monopolistic bodies such as a nationalized coal industry, however, the departure of members to posts in other organizations is likely to be far more common on the administrative than on the technical side, as clearly men of high technical ability in coal mining are not normally likely to seek, or gain, employment in some entirely different industry.

Having said so much by way of general introduction to the subject, it may be best now to make some comparisons between what is done in one of the earlier public corporations, not under any special statutory requirement about staff training, and what is being undertaken by two of the large post-war public corporations which have been placed by act of Parliament under a specific responsibility in this matter. In an article of this length it is hardly feasible to record in detail the arrangements made by all the bodies concerned. Moreover, such arrangements take much time and thought to develop, and the more recently created public corporations have not yet had time to complete and put into effect a full range of training and education schemes. Among the post-war public corporations, therefore, the two of longest standing have been chosen.

It also has to be remembered that, for this very reason, many of the arrangements made by the newer nationalized bodies are still in the planning stage. They are being built on practical foundations laid before nationalization took place, and due credit should be given to those who laid those foundations.

II

DESCRIPTION OF SELECTED SCHEMES

A. The British Broadcasting Corporation

The British Broadcasting Corporation is a body constituted by Royal Charter and operating under licence from the Postmaster-General. Although it is the practice of the British Broadcasting Corporation to fill its higher posts as the result of advertisement both inside and outside its own service, there is no specific requirement for the Corporation to do so nor any obligation to make arrangements for training employees. Apart from those fields of the work of the Corporation which give special outlet for engineers, more particularly electrical engineers, the higher posts are regarded by the Corporation as calling for a blend of administrative and technical ability. The British Broadcasting Corporation is no part of the Civil Service, nor is the nature of its work truly comparable. The Corporation has never adopted the long-standing convention of the British Civil Service under which a definitely preponderant position is given to the administrative officer, who is charged with formulating and executing policy, all technical officers being regarded as advisory to those who hold the administrative positions. The higher officers of the British Broadcasting Corporation are not administrators aided by technical advisers, but carry out a blended function. There are few purely administrative positions anywhere in the Corporation's service, and, at the higher level, few purely technical posts. The upper ranges of this organization call for a faculty which might perhaps be described as administrative ability combined with technical knowledge, and for the generality of higher posts it is this blended capacity which the Corporation needs.

In one respect, however, a civil service precedent has been followed. The British Broadcasting Corporation strongly believes in the value of practical experience as a process of training. Just, therefore, as it is regarded as part of the duty of the senior civil servant to make sure that his juniors are trained for promotion, so do the higher officers of the British Broadcasting Corporation look upon it as part of their task to ensure that those under them are trained for future higher responsibilities. This type of grooming for the future cannot, of course, be readily described, as it is by no means formalized. Its reality and effectiveness depend upon the operation of a deliberate internal policy of moving promising individuals from post to post at suitable intervals, so that the range of their experience is widened and their training progressive. A scheme for achieving this is being worked out, and when in operation should help to secure that flexibility of attitude towards administrative and technical faculties which is necessary for those who are called on to perform the blended functions already described.

It has not been thought necessary by the Corporation to provide any training college of its own, or any internal staff college. There is, however, an internal school to which are sent officers of medium levels recently recruited from outside,

mainly to give them a month's introductory course to the service of the Corporation as soon as conveniently possible after joining. In addition to furnishing a specialized introduction in this way, the course also provides a useful mixing ground for newcomers and those of long standing in the service. Numbers of the latter attend it as a refresher course, and members are drawn also from the ranks of overseas broadcasting services in many lands. For the technical side there is an internal engineering training school, which gives three-month training courses in preparation for promotion examinations, and also refresher courses for technicians.

These courses, however, are in no sense management training courses, and, indeed, the Corporation does not carry out any deliberate management training as such. It is arguable whether the practical administrative training referred to earlier is as good a form of management training as can be devised, but the Corporation has every intention of using external facilities, including any that may be developed under the aegis of the British Institute of Management. It may well be that the British Broadcasting Corporation will find it valuable to make growing use of the conference method, in such forms as the holding of summer schools, which it has not yet tried.

In short, the position is much what one would expect to find in an organization which has grown steadily from a sudden start and is devoted to a single purpose. There are no problems here of reconciling former competing policies, or attempting to unify divergent practices whose differences are rooted deeply in past traditions. The problem is rather the converse one—namely, how, when new branches grow out of the original tree and bear fruit, can they be held together by bonds which will ensure the unity of the Corporation as a whole without hindering progressive development. The reality of this problem was conspicuously illustrated recently in the case of the television service and the strong expressions of view to which the question of its future mode of development gave rise.

B. The National Coal Board

If we take as our next example the National Coal Board, we find ourselves examining the earliest case where a statutory duty to train employees was placed on a nationalized body. Here, a very different problem has demanded an appropriately different solution. On the nationalization of the coal industry, the Coal Board found itself the heir to a very large number of private companies greatly differing in size, and many of them having an exceptional range of ancillary activities. Although valuable work had been done by the Mining Association of Great Britain on the technical side of the industry, there was no central staff plan nor conception within the industry of membership of a single service. Moreover, recruitment to the coal mining industry at all levels was patchy, and for anyone contemplating a career in it the course of promotion was problematical.

To meet the first need for a flow of promising recruits to the medium levels of

the industry, the Coal Board has produced a scheme to which it has given the name of "The Ladder Plan." The essence of this scheme is that, for all new entrants to the industry undergoing preliminary training, there should be available a definite ladder of promotion to higher ranks; and, further, that, as the individual progresses upwards, the available ladders should increase in number as they diminish in width, so that the best use of varying talents can be made. Present juvenile recruitment to the coal industry runs at the rate of about fifteen thousand a year, and the ladder plan provides that about 20 per cent of each year's entrants get onto the main ladder right away.

Progress up the training ladders will lead to the acquisition of various certificates —the General Certificate leading either, on the one hand, to qualification as a certified tradesman or as the holder of a Statutory Certificate eligible for employment as a deputy; or, on the other, through the acquisition successively of the Ordinary National Certificate and the Higher National Certificate, to eligibility for employment as undermanager, mechanical or electrical technician, or surveyor. In speaking of the scheme at the beginning of 1950, Sir Geoffrey Vickers, V. C., the Manpower and Welfare Member of the National Coal Board, said:

> These certificates will not by themselves constitute a qualification for any job in the pit. They will supply only the formal part of the qualifications. Those who are to be tradesmen will have to complete a five years' apprenticeship, taking a General or Ordinary National Certificate before being qualified in any skilled job in their trade at the pit. Men selected for training as deputies must have practical experience and must undergo practical and oral tests whether they have a certificate or not, though those who have a certificate will be entitled to practice as deputies, and subsequently as overmen, earlier than they otherwise would. . . . The importance of the scheme lies in ensuring that men who have it in them to fill responsible posts may not be held back later through having failed to pursue their general and technical education sufficiently in their first years after leaving school.

The value of a scheme of this scale and variety in giving effect to the aspirations which, as mentioned at the outset of this article, were encouraged by nationalization, needs no emphasis. The Board records[14] that in preparing this scheme it drew on much work done in the past by the Mining Association of Great Britain and other bodies, and that the plan brings together the projects and ideas of many people over many years. The scheme is, indeed, the foundation-stone upon which the National Coal Board seeks to fulfill its basic promotion policy for its technical staff on the production side.

> It is the Board's policy to fill most of the senior posts on their staff from among people already employed in the industry. In future many of those who achieve promotion to the higher ranks will have entered the collieries as mineworkers, and by means of the courses of study and experience provided under the Ladder Plan will have joined the ranks of management. Others will be men and women who have been recruited into

[14] NATIONAL COAL BOARD REPORT par. 289 (1949).

clerical, administrative or specialist posts straight from school or from the University. Whatever their educational origins, all will have opportunities for learning their job thoroughly and, as time goes on, of broadening their experience. In this way the best will be able to fit themselves for promotion.[15]

When we come to the level of colliery manager, the Board has instituted important training arrangements.

All colliery managers have to take a statutory qualification for which a university degree or the Institution of Mining Engineers' professional examination may in future be accepted partly or wholly in substitution. In addition, they will receive three years' directed practical training in accordance with a syllabus prepared by the Institution. The men who enter on this training may be men from within the coal industry who have taken or are about to take the appropriate examination by part-time study. For these the higher National Certificate is expected to be of substantial assistance. Equally they may be men from within the industry who have graduated in mining through a whole-time degree course. Finally they may be mining graduates who have not previously worked in the Industry. To stimulate the flow of mining graduates both from within and outside the industry, the Board in 1948 and again in 1949 awarded 100 scholarships, tenable at any University, and it has decided to award a similar number of scholarships for 1950.[16]

The scholarship and directed practical training schemes to which reference is made above are a novel experiment within an industry. The training will last for the individual up to three or four years, depending on previous experience, and is supervised by senior members of the National Coal Board's staff in the coal fields. Among other things it provides for sending prospective colliery managers to residential courses of a fortnight's duration, at which they study their future responsibilities. At the earliest of these residential courses, which were held in the Mining Departments of six Universities, the syllabus was arranged under three main heads:

(1) The status, duties, and responsibilities of a colliery manager;
(2) The place of the colliery manager in the organization of the National Coal Board;
(3) The relation of the colliery manager to the labor force.

The study took the form of group discussions, organized on the basis of "briefs" in which problems were set out, and persons of wide practical experience in the subject attended the courses in order to guide the discussions and give lectures based on their own knowledge.

Under the first heading mentioned above the prospective colliery manager studied all the duties and responsibilities that would fall to him within the colliery under his own control, and emphasis was laid on the standing which he must keep in the eyes and minds of all working in that colliery. Under the second heading he was invited to look outwards and to survey and understand the wider organization of the National Coal Board and the responsibilities which he would bear both to the higher levels of the Board at Area, Division, and Headquarters, and laterally to other

[15] *Id.* at par. 391.

[16] Sir Geoffrey Vickers, V.C.

parts of the organization with which he must be linked for various purposes. It was under this head, too, that the students particularly studied their relationship to technical specialists and others whose assistance and advice would be available to them in their task. Under the third heading was conducted what amounted to a specialized study of the handling of trade union relationships and the process of joint consultation.

This directed practical training has been too recently instituted to assess results, but there is no doubt that, apart from any other benefits, it will be specially valuable in enabling the colliery managers of the future to rub shoulders with each other, instead of attempting to develop quite separately as individuals. It will have, too, a secondary advantage to the Board in fostering a sense of membership in a united service. The training is available every year to two hundred men selected by the Divisional Boards.

The Coal Board has already held four very successful summer schools, at each of which some four hundred or more attended from all grades in the service of the Board, including mineworkers. At these schools a most useful mixing of the different levels of employees takes place, and the summer schools play as important a part in ensuring vertical contact as do the other arrangements in providing it laterally.

It is only right to record, however, that the National Coal Board regards these schemes only as the first important steps to meet training needs on the productive side of the industry. They are by no means comprehensive, as they do not provide for the whole range of the Board's employees.

C. The British Transport Commission

As has already been mentioned, the British Transport Commission has delegated the duties of training and education laid upon it by the Transport Act, 1947, to the Executives set up under the Commission, namely, the Railway Executive, the London Transport Executive, the Docks and Inland Waterways Executive, the Hotels Executive, the Road Haulage Executive, and the Road Passenger Executive. The Commission retains, however, coordinative power and, indeed, is bound to submit to the Minister of Transport a program on which the Executives are to work. In its first annual report the Commission was able to declare that it had made a survey of the existing training and educational facilities of the Executives and, as a result, had formulated proposals to widen and improve them. These proposals were designed to secure the following objectives as circumstances might permit:

(1) To equip staff as quickly, as thoroughly, and as economically as possible to perform their tasks with the maximum of efficiency and safety and personal satisfaction in their calling;

(2) To interest staff in their work, and give them a sense of pride in the job to be done, without which technical proficiency loses much of its value;

(3) To interest staff in the work and aims of the organization as a whole, and by fostering their "sense of belonging" enlist their interest in the success of the undertaking;

(4) To maintain efficiency, alertness, and interest in the work by providing refresher courses in up-to-date ideas, methods, and developments;

(5) To provide opportunity to acquire the necessary knowledge and skill for promotion;

(6) To provide trained staff from whom higher posts can be filled.

The proposals were thus intended by the Commission to provide for vocational training, background training, voluntary training, and further education.[17]

The Commission has also established a Standing Training and Education Committee, comprising members and officers of the Commission and the Executives, to advise on major problems concerning training and education. The purpose of this companies, inherited a more coherent situation than the non-railway Executives (other than the London transport Executive).

In the following year the Commission was able to report that the program for staff training and education, drawn up on the above lines, had been approved by the Minister of Transport, who had given authority to the Commission to proceed. Since then the Executives have been preparing their schemes under the program in close cooperation with each other and with the Ministry of Education in England and Wales and the Scottish Education Department in Scotland. They have also kept in close touch with local education authorities through directors of education.

These schemes are, of course, in the early stages, and it would be premature to attempt a detailed description. It may, however, be well to give some account of the position of the Railway Executive who, by reason of antecedent events, in that the railways had already been grouped some years before nationalization into four large companies, inherited a more coherent situation than the non-railway Executives. (other than the London Transport Executive).

Within the activities covered by the Railway Executive special problems had to be faced at the outset. The Executive took over four large companies created under the Railway Act of 1921, namely, the Great Western; London, Midland and Scottish; London and North-Eastern; and Southern Railways. There was no very marked divergence between the general staff policies pursued in each of these large units, but there were strong traditions in each of them which went back before 1921 to the days of the original railway companies. The railway system of Great Britain has always been haunted by the ghost of George Hudson, M.P., the nineteenth century "Railway King" whose lavish promotion of railway lines, especially in the midlands, set so many problems for posterity. The nature and amount of railway equipment make the physical side of the railways a fact which legislation cannot

[17] BRITISH TRANSPORT COMMISSION REPORT par. 57 (1948).

suddenly change. The railways must be administered as they are, however strong the desire to unify the system may be. All schemes, therefore, for the organization and day-to-day running of British railways are conditioned and limited by the physical layout and operational peculiarities of the lines.

Before the Transport Act, 1947, there was little movement of staff between one railway group and another. Today, up to the salary level of £750 a year, it remains the normal practice to advertise posts only within each railway region. These regions are the London Midland, Southern, Western, Eastern, North-Eastern, and Scottish Regions. Above the salary level of £750 a year vacancies are advertised in all regions. The actual power to make the appointment rests, below the £750 a year salary level, with the Chief Regional Officer of the region concerned; above that level and up to the £1000 a year level the same officer can make the appointment with the approval of the Railway Executive. Numerous transfers between regions result in this upper level from these circumstances, though there are signs, perhaps not unnaturally, that Chief Regional Officers, when other things are equal, prefer to appoint to a vacancy a man from their own region of origin, trained in the tradition with which they are familiar.

Above the £1000 a year salary level, all appointments are made by Railway Executive headquarters, a board being suitably composed, according to the nature of the appointment, of chief officers from headquarters and the region concerned. In case of disagreement the decision is by a majority of the board.

The Railway Executive was fortunate in finding that, in general, the policies of the groups which it took over had not given rise to any notable mal-distribution of age groups, and difficulties arising from blocks of individuals with inadequate outlets for promotion are not found to be unduly hard to solve.

One of the hopes of some advocates of nationalization has always been the reduction of staff and saving of manpower which could be brought about by unifying services and amalgamating duties so that overlapping would be avoided. The possibilities of savings of this kind on the operational side of the railways have been slight. The working of trains being a through operation, little can be done by mere amalgamation of posts to make savings of staff, and some types of apparent duplication of officials cannot be avoided. For example, Birmingham is served by the lines of the old Great Western Railway, London and North-Western Railway, and Midland Railway, and there were, and still are, three railway superintendents overseeing the operation of these distinct sections. What appears here to be a mere duplication of effort is, in fact, the coincidence at the same place of three operational units engaged on different tasks. The physical methods of working these old lines differed—for example, Great Western locomotives have always been right-hand driven, London and North-Western and Midland locomotives were some right-hand and some left-hand driven, and the later London, Midland and Scottish locomotives are all left-hand driven; signals and other apparatus vary accordingly, and even the

systems of logging trains on the three lines are quite distinct. For such circumstances the only present solution is to continue to operate the three units as before, and this is further justified by the fact that, in any event, the volume of work involved would require the three superintendents and their staffs, however the duties were re-arranged. It is, of course, the aim of the Railway Executive to unify the railway system of the country in time, but it needs no emphasis that any project of that kind can only be carried out slowly over a very long period.

On the commercial side of railways, on the other hand, it has been found possible to do a great deal of amalgamation of posts, and the Railway Executive has had to face the problem of staff rendered redundant by these reorganizations. Here again, the transfer of individuals from one region to another is obviously much easier, and the opportunities for unifying procedures far greater. Greater flexibility, too, can be incorporated in staff transfer and training arrangements.

Within the Railway Executive there is no "Ladder Plan" comparable to that of the National Coal Board, but the long-established railway apprentice scheme provides opportunity for advancement to talented young men in the service. Before nationalization some of the main line railway companies had set up internal staff colleges, that established by the London Midland and Scottish company at Derby being a prominent example. The future use of these colleges and the possibility of their expanding to serve wider needs is now under examination. The present concentration by the Executive is on the production of an adequate supply of teachers, and two residential training colleges at Darlington have been combined for training in teaching method. The resultant supply of teachers will be the foundation of the Executive's educational program.

The foregoing description is confined to the internal arrangements of the three public corporations. There is, however, an external facility for higher management training of which mention should be made.

The Administrative Staff College

For training members of their staff who show promise of attaining very high positions in the undertakings, many of the British nationalized industries make use of the Administrative Staff College at Henley-on-Thames. The College is the only institution of its kind and draws its members from all over Great Britain, and some from overseas. It was established and is maintained entirely by British private enterprise. In addition to nominees from other quarters described later, courses at the College are attended by nominees from the British Broadcasting Corporation, the National Coal Board, the British Electricity Authority, the Colonial Development Corporation, the Bank of England, and the following Executives and Authority of the British Transport Commission—the Railway Executive, the London Transport Executive, the Road Haulage Executive, the Docks and Inland Waterways Executive, and the Ulster Transport Authority. The aim of the College is to aid the de-

velopment of administrative skill at the highest level. Three times a year it brings together some sixty men and women who are already experienced administrators and hold responsible positions in quite different walks of life. When they have been assembled under the College roof, where they dwell together for about twelve weeks, they find that a framework is provided for them which is designed to give opportunity to develop their own ideas. There are two parts to this framework—the general environment of the College and the course of studies itself—and the two are complementary.

The College, which is at Greenlands, a large country house on the banks of the Thames near Henley, has been adapted to enable work to be done in circumstances as free as possible from distracting influences. There are enough means of recreation round about to give adequate relief from the intensive course, the house stands by itself in pleasant widespread grounds, and the corporate spirit necessary for the success of the College method grows naturally in this environment.

The program of studies is designed for mature men and women, and is not a teaching course in any sense. The College has no doctrine to preach, and there is little teaching by lectures. The real aim is to give progressive direction to the discussions on which members arriving at the College are anxious to embark among themselves, and to enable them not only to interchange their own ideas but to be assisted in the process by having readily to hand additional means of information through books, visitors, and visits paid to outside institutions.

The course is, however, much more than a mere series of discussions. An important underlying object is to give members the opportunity of practising, without important consequences hanging upon the results, some of the things in which an administrator at the highest level requires to be particularly skilled—such matters as handling a group of collaborators as distinct from giving orders to a group of subordinates; enabling such a group to reach conclusions on controversial subjects within a limited time; handling expert advisers in such a way that they provide the advice and information that the group requires as distinct from any particular "line" that they themselves have to offer; mastering the raw material which has to be handled before sound conclusions can be reached, whether that material be obtained from documentary or human sources; and putting forward, on behalf of and in the presence of others, in conference or before more formal audiences, views resulting from group discussion.

Perhaps the most important part of the work is done in the syndicates of nine or ten into which the members of the College are divided. Each syndicate is composed of men and women whose backgrounds differ as much as possible from each other, so that the purpose of mixing experiences may be achieved. Changes of syndicate are made, of course, for some subjects, in order to give opportunities to members for working with fresh groups.

This is not perhaps the occasion to detail the subjects which are dealt with in

the College course. It may suffice to say that they are designed to throw up as many as possible of the major problems faced by administrators at a high level in any kind of organization, and, in particular, to give the members the opportunity to use their own experience in attempting to find solutions to such problems, as distinct from having to rely on written material or secondhand evidence, as is necessary where the normal "case method" is employed.

The essence of the Administrative Staff College is to provide a mixing ground for men and women drawn from the higher levels of a wide variety of organizations. Those who are sent by the nationalized industries find themselves associated with nominees, at their own level of responsibility, from both large and small firms engaged in private industry and commerce of all kinds, banking, accountancy and finance, insurance, the civil service, local government, and the fighting services. The only important section of industrial life not yet represented at the College is the trade unions, but it has been from the outset the policy of the College to welcome them in every session—and, indeed, its work must be to some extent imperfect until trade union nominees join in the College courses.

III

SOME GENERAL OBSERVATIONS

In view of the hope that has always been expressed by advocates of nationalization that the process will lead to more efficient conduct of the industries so treated, there is natural concern about the general efficiency of these great new organizations. It is assumed to be a principal objective of requiring public corporations to establish promotion and training schemes that thereby their full efficiency can be fostered. The modern doctrine that efficiency cannot be achieved unless those employed have a sense of satisfaction in their work is now widely accepted. Opportunities for improvement of personal skill and for progress to higher levels of responsibility, which training schemes ought to assure, will more than any other one factor bring about this sense of satisfaction.

On the other hand, one must make full allowance for the difficulties that beset any attempt to bring quickly into being every ramification of such very large undertakings. Although the organizations themselves may be formally set up, it is physically impossible to bring about hastily the complex changes which affect the thousands of employees and need time to mature. The interval since even the longest-established of the post-war public corporations was set up in Great Britain is so short that it is not yet possible to do more than outline some of the promotion and training arrangements so far partially made and the hopes that are entertained for the future. Time is an ingredient in successful organization, and it is far too early to claim results from what has been put in hand up to this stage.

A further matter on which it is too early yet to see any advance is the problem of coordination between the training schemes of the various nationalized industries.

It is obviously desirable that there should be some coherence of plan. This rests at present on such liaison as may be maintained between one nationalized industry and another and on the valuable part which is played by the Ministry of Education and the Scottish Education Department, who are consulted by the nationalized industries about their schemes and can discuss them with knowledge of what is happening in other directions.

One of the subjects of training for management is to produce men and women who are efficient in encouraging and controlling the work of others and are familiar with, and able to use competently, modern management techniques. Training schemes should, of course, cover these matters adequately, and seek to develop in trainees the capacity to conduct day-to-day affairs ably and readily and to delegate with confidence a sufficiently wide range of duties to those under them. But training, or at any rate higher training, has to go a long way beyond that. Those who are likely to rise to a high level need to be guided to think about the big problems that face the topmost authorities of very large concerns—those in particular that partake of the character of national institutions. The higher up in a large organization a man or woman is serving, the more common ground there is between the problems he or she is facing and those faced by others at comparable level in other big organizations; and the more do certain large national issues, which affect in common all such organizations, take up the time and thought of those who are directing them. Because all nationalized industries are of necessity on a big scale, any training arrangements they adopt should anticipate these needs and develop the capacity required.

Problems of the kind referred to are not far to seek. In Great Britain, the diminishing number of the population in the working age-groups presents a manpower situation in the solution of which the nationalized industries, with their great numbers of employees, must perforce play an outstanding part. In the nationalized industries, again, is to be found the best laboratory in the country for studying the organizational problems peculiar to large-scale undertakings. Further, the method by which these public corporations are to be kept effectively accountable to Parliament and the public remains to be fully worked out and generally understood. Yet again, the means by which such extensive organizations can maintain their own internal vitality and the sense of liveliness and individual vigor in all their employees demands much study. Moreover, in those undertakings which under a national public corporation attain a position of monopoly, the right balance between attempts to coordinate every activity on the one hand, and the deliberate fostering of internal competition and rivalry on the other, has yet to be achieved.

Important as these problems are, and necessary as it is that higher training schemes should have them in mind, there is one problem on which nationalization as a process ought to shed more light than on any other, and that is the possibility of reconciliation between the two so-called "sides" of industry, the managerial side

and the side represented by the trade unions. It is this objective which is often described as "the achievement of a sense of common purpose." This is a problem distinct from "labor relations," on which there is a separate article in this series. It really amounts to the question whether there shall continue to be, emotionally, two sides of industry, or whether there is some way by which the world of trade unionism can be reconciled, and even in some degree identified, with the management process.

As with so many great problems the real struggle occurs not only in the relationship between organizations but within the individual himself. For example, before the nationalization of the British coal industry, colliery managers were wholeheartedly identified in their own minds, as well as in those of their subordinates, with the managerial "side" of the industry. Since nationalization they remain so, but at the same time have become a part of the great human structure serving under the National Coal Board, and in the Colliery Managers' Association they have a trade union of their own which negotiates to protect their interests in respect of terms of employment. The individual colliery manager, therefore, has now to reconcile his outlook as part of the managerial side in the ordinary conduct of his work with what may be essentially a trade union attitude to his higher employers. This practical difficulty has, of course, faced others in other walks of life, for example, foremen in industry and officials at the intermediate levels in the civil service and in local government. No complete solution to the personal division of allegiance which arises in the man has yet been found, and probably none will be found so long as there is no reconciliation between the forces to which the warring allegiances are owed.

The core of the difficulty may well lie in the fact that when a man, hitherto a member of a trade union, passes on promotion into a higher level, beyond the sphere in which the trade union culls its members, he ceases, in the eyes of his former associates, to be a "union man" and enters a class where his outlook is regarded as irreconcilable with that of a trade unionist. He has passed, as it were, into a hostile camp, to be numbered in future among those from whom attacks on the hard-won rights of trade unions are to be expected. It is remarkable that trade unions in Great Britain appear not to have yet realized the strength of their own position. As Professor G. D. H. Cole puts it:

> Trade unionists, on their side, must learn to be less on the defensive and to have greater faith in the impregnability of their Unions, so as not to be constantly in fear of having their trade union loyalties insidiously undermined by collaboration with the management in pursuit of a common task.[18]

The attempt (if it be one) to provide for trade union participation in the management process by including at the top, in the membership of the public corporations

[18] Cole, *Labor and Staff Problems Under Nationalisation*, 21 POL. Q. 160, 169 (1950).

themselves, trade union men appointed as such, is inadequate. Such a proceeding does no more to effect reconciliation between the managerial and trade union points of view within the organization than putting a military cap on a civilian's head would do to turn him into a soldier. The problem arises from an attitude of mind, and as training schemes of any kind operate chiefly on the minds of those who partake in them they can do much to expedite a solution.

Human prejudices and traditional feelings are, however, so strong that a long time is bound to elapse before an obstacle of this sort can be successfully surmounted. The important thing at present is for its existence to be recognized and for sincere efforts to be made on both sides in an atmosphere of mutual confidence to make progress towards overcoming it. No doubt great benefits would flow if the trade unions wholeheartedly looked on management as the natural outlet and development for the trade unionist. There seems to be no good reason why a trade union should not look upon its members as growing up through, and flowering in, the higher levels of management rather than, as it often seems to do, regarding its most promising buds as cut off when they grow above the level of ordinary union membership. Why should it not be possible for a man, on promotion above the trade union ranks, to be still regarded as keeping his union background? In the respect in which it most matters—the make-up of his character as an individual—the background stays with him all his life. The notion that holding a different position in the organization fundamentally changes his outlook overnight is contrary to human nature. A professional man does not lose his professional grounding by taking a non-professional post: is it, therefore, too farfetched to suggest that trade union experince should be treated as a background qualification just as engineering or accountancy is treated as a background qualification? If this came about, the man going up into the managerial level with a trade union background would be considered as keeping that background throughout his career. Promotion from lower levels within the organization would become the natural means of imbuing management with a proper sense of the trade union point of view. A reconciliation could be thus effected between what have hitherto been described as two sides in industry, without the controversy involved in claims for workers' control. It is a corollary, of course, that on the managerial side a trade union background should be looked on as an asset just as useful in its way as any other, and that the positive desirability of including a proper proportion of persons with that background in managerial ranks should be recognized and fulfilled.

If there is anything in such a hope as this, it is an especially valuable feature of the arrangements made for drawing up training schemes in British nationalized industries that the trade unions are being consulted at every step on the way. The training schemes are the door which should open upon a fair and dispassionate study of this great problem and the development of its solution. It is in the nationalized

industries above all that the experiment would be most hopefully tried, and a precedent there established might in due time be successfully imported into private industry.

If the training schemes of nationalized industries can in due course give a lead toward the solution even of one or two of the major problems mentioned in these concluding observations, they will confer benefits far beyond the confines of those industries themselves. No better justification could be sought for the inclusion by the British Parliament in nationalization Acts of express and general requirements for training and education.

LABOR RELATIONS IN NATIONALIZED INDUSTRIES WITH PARTICULAR REFERENCE TO THE COAL MINING INDUSTRY

W. Kenneth Gratwick, M.B.E.*

I

Introduction

The importance of labor relations in industry, whether nationalized or under private enterprise, cannot be over-emphasized. The human factor is all important and no industry can be expected to prosper unless a firm basis of understanding is secured. Reorganization, new machinery, and other technical improvements will not bring the desired results if labor relations at all levels are not harmonious. The establishment and maintenance of good labor relations call for men of vision and experience in securing cooperation and in the long run much will depend on their handling of this most difficult problem.

II

Conciliation

One of the first steps in labor relations is to establish conciliation machinery for the settlement of terms and conditions of employment. The various Acts[1] by which certain industries were placed under public ownership imposed a duty on the management to set up and maintain joint machinery for this purpose. So far as the coal mining industry is concerned the relevant provisions are to be found in Section 46(1)(a) of the Coal Industry Nationalisation Act, 1946, which is in the following terms:

> It shall be the duty of the Board [*i.e.*, the National Coal Board set up under the Act] to enter into consultation with organisations appearing to them to represent substantial proportions of the persons in the employment of the Board, or of any class of such persons, as to the Board's concluding with those organisations agreements providing for the establishment and maintenance of joint machinery for the settlement by negotiation of terms and conditions of employment, with provision for reference to arbitration in default of such settlement in such cases as may be determined by or under the agreements. . . .

Machinery for dealing with disputes arising out of wages and conditions of employment had been in operation in the coal mining industry at district level for

* Secretary of the Mining Association of Great Britain since March, 1950. Head of the Statistical Branch of the Mining Association of Great Britain, 1936-1946. Senior Director of Labor Relations Department of the National Coal Board, 1947-1950.

[1] Civil Aviation Act, 1946, 9 & 10 Geo. 6, c. 70, §19(1)(a); Coal Industry Nationalisation Act, 1946, 9 & 10 Geo. 6, c. 59, §46(1)(a); Electricity Act, 1947, 10 & 11 Geo. 6, c. 34, §53(1)(a); Transport Act, 1947, 10 & 11 Geo. 6, c. 49, §95(1)(a); Gas Act, 1948, 11 & 12 Geo. 6, c. 67, §57(1)(a); Iron & Steel Act, 1949, 12, 13 & 14 Geo. 6, c. 72, §39(1)(a).

many years, but it was not until 1943 that machinery for the same purpose was established at the national level.

In 1942 the Government appointed a Board of Investigation[2] under the chairmanship of Lord Greene, then Master of the Rolls, with terms of reference which included an instruction to submit recommendations for the establishment of a procedure and permanent machinery for the settlement of wages and conditions of employment in the coal mining industry. The setting up of a statutory body for this purpose however was found to be unnecessary for the reason that, as a result of discussions between representatives of the owners and of the workers, it proved possible to submit to the Board joint proposals for the establishment of national and district machinery based on the principle of collective agreement, and the Board of Investigation, impressed by the agreement of the two sides and by the practical nature of the proposals, followed them very closely in its Third Report.[3] The agreement was subsequently unanimously approved by the Mining Association of Great Britain and the Mineworkers' Federation and came into operation on May 25, 1943.

The National Conciliation Board set up under the agreement consisted of a Negotiating Committee and a Reference Tribunal.

The Joint National Negotiating Committee numbered twenty-two members, of whom half were nominated by the owners and half by the workmen. There were two chairmen and two secretaries; one of each being appointed by each side.

The National Reference Tribunal consisted of three permanent members, none of whom could be engaged in the coal mining industry, or (save in the case of a member of the House of Lords who held or had held high judicial office) a member of either House of Parliament.

The district conciliation agreements were modified in order to conform to a uniform basis and, in particular, to make provisions so that national questions, as well as district questions likely to affect more than one district, could be referred for determination to the Joint National Negotiating Committee or, if the Committee failed to agree, to the National Reference Tribunal set up under the national scheme. Every district conciliation agreement made provision for the appointment of a district referee to decide questions which the district conciliation board could not settle.

The agreement did not lay down procedure for settlement of questions arising at individual pits, except when they reached the stage of discussion under district conciliation agreements, but it did put an obligation on the national and district

[2] Appointed June 5, 1942; issued its first report on June 18, 1942. REPORT OF THE BOARD OF INVESTIGATION INTO THE IMMEDIATE WAGES ISSUE IN THE COAL MINING INDUSTRY (H. M. S. O., London, 1942).

[3] THIRD REPORT OF THE BOARD OF INVESTIGATION INTO WAGES AND MACHINERY FOR DETERMINING WAGES AND CONDITIONS OF EMPLOYMENT IN THE COAL MINING INDUSTRY (H. M. S. O., London, Mar. 15, 1943).

organizations on both sides of the industry to establish better arrangements for dealing with pit disputes.

On January 1, 1947 the coal mines were transferred to the National Coal Board constituted under the Coal Industry Nationalisation Act, 1946.[4]

The National Union of Mineworkers (formerly the Mineworkers Federation of Great Britain) and the National Coal Board desired to adopt the national conciliation scheme, which had been in operation since 1943, with such modifications as necessary to fit the new situation, and this was done by an agreement dated December 5, 1946. The district conciliation agreements were revised. Two districts amalgamated and three others combined, but even so it was not found possible to bring the district organization of the Union into line with the divisional organization of the Board. It remained for the Board and the Union to establish uniform pit conciliation machinery.

A number of pit conciliation schemes had been established prior to the vesting date in conjunction with the district schemes. These had worked satisfactorily, but the opportunity which nationalization provided for making a comprehensive scheme for the speedy settlement of pit questions was one not to be neglected. Accordingly an agreement was made on January 1, 1947, under which the National Coal Board and the National Union of Mineworkers agreed to adopt a pit conciliation scheme which is now applied throughout the coal mining industry.

The principles of this scheme are:

(1) arbitration failing agreement by negotiation;
(2) speedy and efficient method of dealing with questions arising at individual pits;
(3) settlement whether by agreement or by arbitration binding on both parties and their members;
(4) district and national questions must be referred to district and national machinery respectively.

There are many questions in disputes arising at a pit, but whether they are of minor or major importance there is procedure laid down for reaching settlement.

The first stage is discussion between the workman or workmen concerned and the colliery official who allocates and supervises his work. Failing settlement, then within three days discussions take place between the workman or workmen concerned and the colliery manager or his appointed representative. If no settlement is arrived at, and the workman or workmen concerned desire to pursue the matter, the latter report immediately to the appropriate trade union official. That official has to decide whether the question is of minor importance (*i.e.*, affecting an individual workman or a small group of workmen) or of major importance. Should he decide that the question in dispute is of a minor character, which might be settled with the manager or his representative, he proceeds to have such discussions, but if

[4] Coal Industry Nationalisation Act, 1946, §1.

he fails to settle within three days he must carry out the procedure which would have been followed in the case of questions in dispute of major importance as set out in the following paragraph.

Immediately on receiving the report of a dispute, or upon a decision of the trade union branch to raise a question, the trade union official has to make a written request to the colliery manager, or where a question is raised by the management the colliery manager is required to make a written request to the trade union official, for a pit meeting for the purpose of discussing the question between representatives of the union and of the management. Such pit meeting must be held within five days.

If the dispute in question remains unsettled at the end of fourteen days from the date of request for a pit meeting then that dispute must be referred to the joint disputes committee.

In the event of the joint disputes committee failing to settle the question within a period of fourteen days, the joint secretaries of the district conciliation board must refer the question for decision to an umpire selected from a panel set up under the scheme.

In the first place the umpire has to satisfy himself that the question is a pit question. If in his opinion it is not a pit question he cannot decide the dispute, and it must be dealt with under the district conciliation scheme. If, however, in his opinion it is a pit question he proceeds to determine it and his decision is final.

The umpire has two assessors; one nominated by the union, and one by the management.

Thus the comprehensive conciliation machinery is in three tiers—(1) national, (2) district, and (3) pit—with provision for arbitration on each tier for settling questions arising out of, or connected with, wages or conditions of employment in the coal mining industry. A "question" is defined in very wide terms and includes a part or branch of a question.

In most districts there is a panel of umpires from which the umpire to sit in any particular case may be either chosen by lot or taken in rotation. In other districts there is appointed one umpire only, to whom pit questions are referred if necessary.

The important point is that the decision in any particular case is in the hands of one umpire. This means that it is a clear cut decision. If there were, say, three umpires, majority decisions would be inevitable and such decisions might tend to lead to dissatisfaction.

Some districts prefer men of the legal profession as umpires, while others prefer men with academic or professional qualifications, or men with a knowledge of the industry. It should not be overlooked that the umpire has two assessors—one appointed by each side—to assist him, but the assessors are not allowed to vote upon or be parties to the decision.

The machinery which has been described in the preceding paragraphs covers

about 90 per cent of the employees of the National Coal Board, but under the 1946 Act[5] the Board is required to develop conciliation machinery for all sections of its employees. There remained managerial grades, clerical staff, junior officials, foremen, and those grades in activities other than coal mining.

The managerial staff had not been members of a trade union. Their salaries and conditions of employment had been settled individually, by direct arrangements between employer and employee. It was not long however before an organization was formed to represent these grades, and in 1947 the Board granted this organization recognition for grades on a level with undermanagers and upward.

The conciliation machinery which had been established for the general body of workmen formed the model for that in respect of the managerial grades. The national arrangements were similar and the same National Reference Tribunal was appointed. Owing to the fact that prior to nationalization there was no general district basis for these grades it was more convenient to have "divisional" instead of "district" schemes. The divisions were identical with those of the Board. The model "divisional scheme" follows the same pattern as the district schemes. Schemes comparable with the pit conciliation scheme are not necessary for this staff.

As regards clerical staff, there were two unions claiming to represent them at area level and below. There was much competition between the unions for membership. Clerical workers in most districts were not organized, but in at least one district there was a collective agreement prior to nationalization.

The difficulties in the way of organization were considerable. One Association, which had agreements with the previous owners covering groups of collieries, and even individual collieries, was comprised of grades from clerk to general manager as well as technical staff. This Association was strong only in one district and had not been recognized on a district basis.

While the National Coal Board honored the agreements which existed at the vesting day it refused to give the Association national recognition in respect of any of the grades in its membership. During the latter part of 1947 this Association was merged in the British Association of Colliery Management, with which the Board later concluded the conciliation agreement for managerial grades previously mentioned.

Prior to the vesting date the Board had consulted the Trades Union Congress as to which union should represent clerks, but without success.

The two unions concerned failed to come to an agreement to act jointly, and finally the Board entered into separate negotiations on wages and hours of work with the unions.

Agreements were concluded early in 1948. In 1949 an agreement was concluded between the Board and the Clerical and Administrative Workers' Union for clerical

[5] *Id.* §46(1)(a).

and junior administrative staff at the headquarters in London. Conciliation machinery was not established for clerical workers until April, 1951.

Officials below the rank of undermanager were a very difficult problem.

In most districts there had been a union representing mainly deputies and these district unions formed themselves into the National Association of Colliery Overmen, Deputies and Shotfirers, so that the Board was able to give national recognition to this organization in respect of deputies.

It had been the practice in a number of districts for the district unions representing deputies to take into their membership overmen and shotfirers in addition to deputies.

Other unions, however, had overmen and shotfirers in their membership. The difficulties of making agreements covering a class or grade of employee when they are in more than one union are considerable. In this case it was even more difficult as 100 per cent of the class in one district were in one union, while 100 per cent of the class in another district were in a different union. Further, there were district collective agreements, still in operation, negotiated by the different unions.

Neither union was willing to give up its members nor was it possible to effect an exchange of members so that overmen would be in one union while shotfirers would be in another.

When it became necessary to review the remuneration of these classes the Board met the unions concerned and they agreed to act jointly in respect of overmen and shotfirers. There is as yet no conciliation machinery throughout the industry for overmen, deputies, or shotfirers.

There still remained the problem of other junior officials and certain foremen grades. Their wages and terms of employment varied from colliery to colliery. The majority of them were not in a union at all and following nationalization there was much competition among the unions for their membership. Except in one district there was no union which could claim that it had negotiated and signed a district agreement covering them.

It will take some time for a satisfactory solution to be found to this problem. In the meantime their remuneration and conditions of employment were adjusted in the divisions, having regard to the need to maintain, or, as the case may be, to establish a proper relationship between their wages and the wages of other classes and the wages of those supervised by them. Those unions which had received recognition at national level were consulted at district level in respect of their members.

The National Coal Board had acquired coke and by-product plants, briquetting plants, brickworks, house property, waterworks, land, and a number of other assets which had been owned by the colliery companies or their main subsidiaries, in addition to coal industry assets.

A considerable number of workmen were employed in these ancillary activities—the most important of which were coke and by-product plants.

There had been no national or district conciliation machinery for these workers prior to nationalization as there had been for mineworkers. Three unions were concerned with these workmen. One withdrew, and a working arrangement was made between the other two, under which the National Union of Mineworkers undertook to carry out negotiations on behalf of the members of both unions. Conciliation machinery for coke-oven and by-product workers was set up in 1948. Again it was based on the same lines as that for mineworkers. There are three tiers—national, district, and plant. The members appointed to the National Reference Tribunal under the national scheme are the same as in the case of the national scheme for mineworkers.

The number of men employed in briquetting plants is not large and the machinery set up for them is intended to provide in a simple form for negotiation and, if necessary, arbitration on matters relating to wages and conditions of employment. There are three unions concerned and they have agreed to act jointly. At the national level there is a National Joint Council numbering sixteen members, half of whom are appointed by the Board and the other half by the unions. The Council acts by agreement between the two sides, each side acting by a simple majority. The procedure for settling disputes is entirely different from the coal mining scheme. In the event of failure to agree, the question in dispute is referred to a form of arbitration to be agreed upon by both sides, and if such agreement is not reached, then the dispute is to be referred to the Ministry of Labour and National Service, with a view to intervention by a conciliator. If this procedure fails, either side of the National Council can request that the question be referred to the Industrial Court appointed under the Industrial Courts Act 1919.[58]

The scheme provides for the establishment at each plant of a procedure for dealing with plant questions. No uniform arrangement has been laid down in view of the comparatively small number of employees at the plants, and it has been left to the representatives of both sides in each division to establish a conciliation procedure which will best suit the individual plants in each division, but it must provide certain essentials laid down in the national scheme, *viz*: any question under dispute which involves the interpretation of a national agreement must be referred to the national machinery, and any other question which cannot be settled at the plant must be referred for negotiation between the management and the trade union representatives. If they fail to settle, the matter has to be referred to a form of arbitration to be agreed between representatives of the Board and of the unions.

More than half of the workmen are employed at plants in one division, and for this reason provision was made for the establishment of a divisional scheme if the National Council deemed it necessary. A conciliation board with similar procedure

[58] 9 & 10 GEO. 5, c. 69.

to that of the National Council was set up in the division concerned. If the conciliation board fails to reach a settlement the matter has to be referred to a form of arbitration, to be agreed between representatives of the Board and the unions.

In the transport, electricity supply, and gas industries the conciliation machinery which existed prior to nationalization was continued, and the problems which the National Coal Board had as regards unions were not so considerable.

There is no doubt that nationalization offered a great opportunity to the trade unions. Men who formerly had not felt it necessary to be members of a trade union began to think that it was desirable to join. No doubt this was inevitable as many felt that the personal touch had gone.

In the past if a man felt aggrieved he could leave one employer and find employment with another in the same industry. Under nationalization he cannot find another employer in the same industry as there is only one.

In theory there should be no stoppages through disputes at all, but in fact in the coal mining industry there were about 1,600 stoppages in each of the years 1947 to 1950.[6]

These could have been avoided if the workmen had used the conciliation machinery.

It is extremely important that both sides should strictly adhere to the constitutional machinery. Any reluctance to do so by either side undermines confidence. It may be said that all the strikes were unofficial; they were not backed by the union. Most of them were small, and could only mean delay in reaching a settlement, as the Board could not negotiate until work was resumed. The Board is responsible for seeing that the conciliation machinery is understood by its representatives wherever they may be, but the union also has a responsibility in making the working of the machinery known to its members through the districts, the branches, and the lodges, as well as disciplining its members to honor awards or decisions made at any stage as final and binding. The pit scheme is perhaps the most important part of the machinery and its success depends on the confidence which both sides have in each other and in the justice of the scheme.

There was one attempt by discontented and breakaway elements to evade agreements to which they had been parties. A section of one class of workmen, *viz.*, winding enginemen, broke away from the National Union of Mineworkers because they felt that their interests were not adequately represented. A new union was formed for winding enginemen and this union claimed the right to be recognized by the National Coal Board as representing winding enginemen at the national level. The Board could not negotiate with an organization outside the conciliation machinery, which already provided for winding enginemen, without undermining the established machinery and making it completely ineffective. In July 1949 the

[6] NATIONAL COAL BOARD REPORTS AND ACCOUNTS 35, par. 168 (1948); *id.* at 81, par. 311 (1949); *id.* at 51, par. 233 (1950).

breakaway union reported to the Minister of Labour that a dispute existed between them and the Board. The dispute was referred to the National Arbitration Tribunal—a body set up under the Conditions of Employment and National Arbitration Order No. 1305 of 1940—and, on the question of recognition, the National Arbitration Tribunal[7] endorsed the finding[8] of a previous Court of Inquiry that the wages and conditions of winding enginemen should be settled by means of the conciliation machinery set up by agreement between the Board and the National Union of Mineworkers. It would seem that this matter is one of internal organization of the union and it is to be hoped that the union, realizing the fundamental principle which is at stake, will be able to arrive at a solution satisfactory to all winding enginemen.

III

NEGOTIATION

In order to understand the wage position in the various coalfields on January 1, 1947, when the coal mining industry was transferred to public ownership, it is necessary to give a brief summary of past arrangements.

For many years wages had been regulated by separate agreements negotiated in the twenty-one districts into which the coal mining industry was divided for this purpose.

While there were some conditions of employment, other than wages, operating in a district which were also covered by a district agreement, there were others, such as coal allowances, which were often governed by agreements at an individual colliery or group of collieries. An astonishing number of variations are to be found in these colliery agreements relating to the supply of coal to miners as regards quantity, price (if any), and conditions attaching to the concession.

The basis rates for the various classes of workmen on day wages were determined in each district and these operated as minimum rates. The basis rates for piece-workers were settled at the individual collieries in order that the local physical conditions and methods of work could be taken into account.

The district agreements provided that the percentage addition to basis rates in any given period should be calculated by applying a formula to the results of colliery working in a past period. Thus, for example, the percentage addition to basis rates in March might be based on the results in January, that in April on the results in February, and so on.

The formula was based on the principle, which was common to all districts, of sharing in agreed proportions the "surplus proceeds" (*i.e.*, the difference between proceeds and costs other than wages) between wages and profits. The ratio between

[7] National Arbitration Tribunal Award No. 1340, issued on Oct. 10, 1949.

[8] REPORT OF A COURT OF INQUIRY (CONSTITUTED BY THE MINISTRY OF LABOUR AND NATIONAL SERVICE UNDER THE INDUSTRIAL COURTS ACT, 1919) INTO A DISPUTE BETWEEN THE NATIONAL COAL BOARD AND THE NATIONAL UNION OF COLLIERY WINDING ENGINEMEN (Jan. 24, 1948).

wages and profits was 85:15 in most districts and although it was slightly different in a few districts the average over the country as a whole was approximately 85:15. It is necessary to add, however, that each district agreement laid down a certain minimum percentage addition to basis rates below which the level of wages could not fall.

Under these ascertainments the wages payable in each district therefore varied according to the capacity of the district to pay except in those districts where the results of colliery working were such that the wages payable were at the minimum percentage addition to basis rates provided by the district agreement.

In March 1940 a national agreement was made under which it was agreed that the district wage arrangements should continue to operate during the war, subject to mutually agreed alterations, but increases of wages necessary to take account of the special conditions arising out of the war, and particularly the increased cost of living, should be dealt with on a national basis by means of uniform flat-rate additions. The flat-rate additions were determined by a formula based on the cost of living index figure published by the Ministry of Labour.[9] The cost of these additions was deducted from the balance available for wages in each district thus reducing *pro tanto* the percentage addition to basis rates payable in those districts which were paying wages above the minimum. The effect, therefore, was to increase only the minimum wages payable, by the amount of the flat-rate addition.

Circumstances arose during the war which made it imperative, in order to preserve peace in the industry, to grant further increases on a national basis by way of flat rates, all of which were treated in the district ascertainments in the same way as the first war advance which varied according to the formula based on the cost of living index figure.

In May 1941 the Essential Work (Coalmining Industry) Order[10] came into operation. This Order provided for the payment of a guaranteed wage, in respect of every week, to every workman who during his normal working hours was (a) capable of and available for work, and (b) willing to perform reasonable alternative work when his own work was not available for him.

In June 1942 as the result of the Report of the Board of Investigation into the Wages of the Coal Mining Industry[11] the principle of a national minimum weekly wage was accepted and minimum weekly wages, which included the value of allowances in kind, were fixed for adult underground and adult surface workers respectively. Later national minimum weekly wages for those under 21 years of age were granted by awards of the National Reference Tribunal and the minimum weekly

[9] Cost of living index figure (July, 1914 = 100), published monthly in the Ministry of Labour Gazette. The figure was discontinued in June, 1947.

[10] S. R. & O., 1941, No. 707; amended by S. R. & O., 1941, No. 2008; 1941, No. 2096; *id.*, 1942, No. 1847; 1943, No. 180; and 1943, No. 505.

[11] REPORT OF THE BOARD OF INVESTIGATION INTO THE IMMEDIATE WAGES ISSUE IN THE COAL MINING INDUSTRY, *op. cit. supra*, note 2.

wages for adults were increased. These latter, by telescoping the lower rates then operating, resulted in a serious disturbance of the relativity of the wage scale in many districts. The unrest which this caused was so serious that the owners and workers commenced negotiations in the various districts with a view to granting increases to iron out the anomalies which had been created.

The Government, however, stopped these negotiations and put forward to both sides of the industry certain proposals for the stabilization of wages other than changes due to the cost of living. These proposals were ultimately embodied in an agreement made between the Mining Association of Great Britain and the Mineworkers Federation of Great Britain in April 1944. This agreement suspended the district ascertainments for the duration of the agreement. It also provided that during the currency of the agreement no variation would be sought by the parties in the rates awarded in the existing operative awards of the National Reference Tribunal or district conciliation machinery or in district rates as modified by the agreement. Further, no application for alterations in wage rates at a pit could be made other than those normally made in respect of changed methods or conditions of working in accordance with custom or agreement existing in the district. In short, it stabilized wages for a period of at least four years as the agreement could not be terminated before June 30, 1948.

It was not surprising, in view of what has been said, that in January 1947 wages in the various districts ranged over a considerable scale with the highest wages being paid in those districts which were the most profitable.

Agreements made between the National Union of Mineworkers and the Mining Association of Great Britain, and between constituent associations of the National Union of Mineworkers (formerly the Mineworkers Federation of Great Britain) and associations of employers, and settlements made under the established conciliation machinery were carried over by the Board on January 1, 1947 subject to an important modification of the April 1944 agreement.

The modification raised the ban on seeking alterations in the rates awarded by the National Reference Tribunal and enabled the Board and the Union to enter into national agreements on wages. It also allowed applications for alterations in wage rates at a pit to be made after a period of six months following the establishment of pit conciliation machinery. This machinery was established on January 1, 1947 and so applications for alterations in wage rates at a pit could be made as from July 1, 1947.

The way was now open for negotiation on a national basis. The National Union of Mineworkers pressed strongly for the introduction of a five-day week. Early in 1946, discussions about the possibilities of the five-day week had taken place between representatives of the Union and the Ministry of Fuel and Power with the result that the Minister of Fuel and Power announced in the House of Commons in June

1946[12] that the Government had no objection to its introduction provided that it was properly organized and the country's needs of coal were met.

The Reid Report[13] had recommended that there was a strong case for introducing a five-day week of eight hours a day (*i.e.*, an increase of half an hour per day).

The National Coal Board decided that negotiations should be commenced soon after the vesting date (*i.e.*, January 1, 1947) on the conditions which should be applied in a five-day week so that the output which the country needed would be forthcoming. The claim of the Union was that while there should be a reduction in the normal working week to five days there should be no reduction in wages. After long negotiations it was finally agreed that the five-day week should commence on May 5, 1947. The agreement[14] provided for the working of five full shifts of 7½ hours plus one winding time[15] for underground workers. This meant no increase in the length of the shift except at some collieries where it had been customary to work shorter hours on certain afternoon or night shifts.

As regards surface workers, the normal working week became one of 42½ hours (exclusive of mealtimes) in five full shifts of 8½ hours except that if under an existing district agreement the normal working week had been less than 42½ hours then that should continue spread over five days.

The hours of surface workers previously had varied considerably, not only in respect of the normal week but also daily. Those manipulating coal on the surface had often worked different hours from other surface workers as their work was geared to production. On the average it meant a considerable reduction in weekly hours although certain workmen had to work a little longer on each of the five days.

In order to get the output which was needed it was necessary to increase the weekly output and accordingly it was provided that there should be a reassessment of tasks on the basis of a fair day's work for each man concerned. It had previously been the practice at certain collieries for workmen to leave the pit before the end of the shift if their task had been completed, but with a five-day week customs such as this had to be abandoned. The response on the whole was disappointing.

The question of wages was exceedingly difficult. Some workmen had worked six shifts per week, others six and five in alternate weeks, while others had worked various combinations of six and five, and some only five per week. Finally it was agreed that a workman who worked his five full normal shifts should receive a bonus.

[12] 424 H. C. DEB. 1322, 1325 (5th ser. 1946).

[13] REPORT OF THE TECHNICAL ADVISORY COMMITTEE ON COAL MINING (Mar. 1945), CMD. NO. 6610 (1945).

[14] NATIONAL COAL BOARD ANNUAL REPORT AND STATEMENT OF ACCOUNTS FOR THE YEAR ENDED DECEMBER 31, 1947, 197-200, App. IV (1948).

[15] "Winding time" is the time spent either in lowering the whole of a shift of workmen into the pit or raising them again. The winding time in Great Britain averaged over the whole of the collieries is about half an hour. The hours underground bank to bank are therefore about eight hours per shift. The average working time at the coal face (less breaks) is about 6¼ hours per shift.

In the case of a workman paid a daily wage the amount of the bonus was his average day wage while in the case of the pieceworker it was 16 per cent of his earnings in his five shifts. The bonus is conditional on attendance throughout the five full shifts.

Any work performed outside the normal working week was paid at overtime rates. The "weekend" period was increased from three to four shifts. The overtime rates were increased from time-and-a-third to time-and-a-half while weekend rates were increased from time-and-a-half to double time. The net result was an increase in wages which fell unevenly not only on various districts but on certain workmen at collieries within a district. Some workmen on the minimum received no increase at all in their wages for a normal working week. The wage structure had become even more complicated.

This was an agreement which was bound to cut across some district or local customs but they had to go if the national agreement was to be maintained. Difficulties arose over increasing the tasks, adjusting the hours of certain grades of surface workers, and many other matters. While all these should have been settled by means of the established conciliation machinery, unfortunately there were stoppages resulting in a loss of 800,000 tons.[16]

It soon became clear that the output needed would not be obtained and after long negotiations a settlement was reached providing for organized overtime working of either (1) a sixth shift which might be shorter than a normal shift but in no case less than 6½ hours plus one winding time for underground workers, or (2) an extra half-hour per day on each of the five normal shifts, or (3) both (1) and (2) having regard to local circumstances. Arrangements were accordingly made in the divisions in the early part of November 1947. The agreement terminated on April 30, 1948 but was then renewed for a period of twelve months. Further annual renewals were made in April 1949 and April 1950.

The provisions of the five-day week agreement, however, continued to operate. The extra hours worked whether on each day or by means of an additional shift were paid for at the appropriate overtime rate.

The Reid Report[17] had stressed that one of the advantages of the five-day week was that it left the weekend free for repair and maintenance work. That advantage has been lost for the reason that with few exceptions the "organized overtime" has been worked by way of a sixth shift at the weekend.

In October 1947 the National Union of Mineworkers submitted a claim for a general increase in the wages of underground and surface workers. The Board however took the view that a general increase could not be justified, but that they would consider the wages of the lower paid workers. After further negotiations it

[16] NATIONAL COAL BOARD ANNUAL REPORT AND STATEMENT OF ACCOUNTS FOR THE YEAR ENDED DECEMBER 31, 1947, *op. cit. supra* note 14, at 17, par. 71.

[17] REPORT OF THE TECHNICAL ADVISORY COMMITTEE ON COAL MINING, *op. cit. supra* note 13, at 125, par. 743.

was agreed that the minimum weekly wages should be increased to £5.15.0. for adult underground workers and to £5.0.0. for adult surface workers. The minimum wages for those under 21 were increased proportionately. Day-wagemen received increases of up to 2/6d. per shift (underground) or 1/8d. per shift (surface) provided that the revised rates did not exceed fixed "ceilings."

The result was that while the men in lower paid districts with high costs and with little or no profit received substantial increases many of those in the higher paid districts with low costs and high profits received little or no advance.

It was however loyally accepted in the latter districts but how far this kind of agreement will be accepted in the future is doubtful.

It is impossible to raise every district up to the highest. The cost would be prohibitive. The answer must be to reduce costs by increasing productivity per man in the high cost districts. Natural conditions may be a factor working against this and while the costs may never be reduced to the low level of some districts there is room for a substantial increase in output per man, per shift and per annum, which would result in substantial savings in costs. It seems clear that a simplified wage structure can only be developed gradually. The first step towards this end was made in June 1948 when an agreement was signed on the classification, grading, and rates of wages of craftsmen who represent about 5 per cent of the workers employed in the industry.

One or two district agreements had classified craftsmen and graded them but in most district agreements tradesmen were only classified according to their trade without any grading.

The district rates were often not the same for all trades. In a few districts there were no district rates for these classes in existence; the rates had been determined at individual collieries according to local circumstances. The result was that prior to the national agreement of June 1948 the variation in rates payable to craftsmen was considerable. This agreement scheduled those classes of workmen to be regarded as skilled craftsmen. It provided for two grades, namely, Grade I (fully skilled) and Grade II (others).

It was a difficult task to classify and grade the workmen colliery by colliery but, with goodwill on both sides, the appropriate representatives of the Board and the union in each of the divisions completed it before the end of year, except in one division where agreement was finally reached early in 1949.

A number of other national agreements have been made, *e.g.*, wages for certain grades and holidays with pay, but one agreement providing for the deduction of union contributions from the wages of the union's members is of particular interest. It was only concluded after prolonged negotiations.

When the request for the deduction of union contributions was made to the Board by the National Union of Mineworkers at the beginning of 1948, the Union

stated that they desired a national agreement which would provide that membership of the Union should be a condition of employment.

Immediately prior to nationalization in some districts this had been a condition of employment but in others no such condition had been imposed although it was understood that colliery officials would encourage workmen to join a union.

To grant the request would have meant a "closed shop" and those workmen who did not join a union would have to be dismissed. As there was now only one employer for the whole industry the workmen would not only be dismissed from their job but from the industry. Further, if the union expelled a workman from membership, the Board would be compelled to dismiss him although in all other respects he was a satisfactory employee.

The Board refused to enter into such an agreement but agreed to a procedure for the deduction of trade union contributions which came into operation in the majority of districts early in 1949.

It is of interest to note that in at least one district the local union has not asked the division to put this practice into operation. The individual continues to pay his union dues to the branch treasurer and presumably the local union feels that this method retains a closer contact with its members.

In October 1950 the national weekly minimum for adult workers was increased by 5/- per week to £5.5.0 for surface workers and £6.0.0. for underground workers. These minima however include the value of allowances in kind. The allowances in kind are free houses or rent allowances in lieu thereof and free or cheap coal. The value agreed in the various districts for this purpose however is only a nominal one representing a third or even less of the real value.

This is a very real difficulty in the way of revising the wage structure. The unions have rejected an offer by the Board to pool the total tonnage and receipts of miners' coal and share the pool in a uniform manner to be agreed.

It had been proposed that the quantity, the price, and conditions of entitlement should be governed in the future by a national agreement on miners' coal superseding all existing pit or district agreements.

The most the Union offered to do was to endeavour to persuade those districts, where workmen received more than a certain minimum quantity, to give up a small portion of their entitlement for workmen in two districts where it had not been the practice to grant miners' coal. The Union, however, could not get the support of the workmen in those districts which would have to contribute and accordingly the scheme had to be abandoned.

Many of the existing pit or district agreements on the supply of miners' coal were made many years before the advent of pithead baths, and in many cases today the quantities to which the recipients are entitled are far in excess of what would be needed for ordinary requirements. In some districts there are agreements under

which tonnage not taken can be sold back to the colliery at a price not much less than the pithead price.

The problem has been tackled in Scotland with partial success in that agreement has been reached on quantity per annum. Those entitled to coal at collieries with pithead baths will receive less than those at collieries without pithead baths.

It would seem clear that agreements in all divisions on these lines at least are long overdue, but there is no doubt that it would be beneficial in the long run to have a national agreement regulating the supply of miners' coal even if, as a first step, it was only on the principles to be applied.

As time goes on this question will assume more importance in view of the contemplated transfers of workmen from one colliery to another. Further, more and more collieries are being equipped with pithead baths and the difficulty of reaching a solution will then increase.

It is an important matter from the point of view of labor relations. The anomalies are considerable and no strong case can be made out to justify them, bearing in mind particularly that there is only one employer.

It is clearly unsatisfactory for the wages and conditions of employment of workmen to be governed by so many different agreements.

National agreements which have to be superimposed on district agreements are liable to appear unnecessarily complicated to workmen in a particular district for the reason that certain items which are mentioned to cover the position in other districts have no meaning at all in that particular district. The agreements which have been made by the Board have lessened the wide differences which existed in rates of wages by day-wagemen as between districts.

From the point of view of labor relations the maintenance of the relationship between the rates of wages of the various classes of workmen at a colliery and in the same district is extremely important. The trouble is that these relationships are not the same in each district and since nationalization there has been a tendency, not only on the part of the unions, but also on the part of the workmen, to look rather more at the position of similar classes of workmen in other districts with the result that dissatisfaction ensues.

IV

CONSULTATION

The various acts by which certain industries were placed under public ownership imposed an obligation on the management,[18] except in those cases where satisfactory machinery was already operating, to enter into consultation with the appropriate organizations representing the workmen in order to establish and maintain machinery for joint consultation on questions relating to the safety, health,

[18] Civil Aviation Act, 1946, §19(1)(b); Coal Industry Nationalisation Act, 1946, §46(1)(b); Electricity Act, 1947, §53(1)(b); Transport Act, 1947, §95(1)(b); Gas Act, 1948, §57(1)(b); Iron and Steel Act, 1949, §39(1)(b).

and welfare of employees and on the organization and conduct of the operations in the industry and also on other matters of mutual interest.

As regards safety and health it should be emphasized that the human factor is all important. If common agreement can be achieved on measures to prevent accidents and to safeguard health there is more chance of success. A good consultative committee can do much in this direction and raise the standard of self-discipline on the part of the workmen themselves in complying with safety regulations and local rules.

In the coal mining industry consultative machinery has been set up at all levels—national, divisional, area, and colliery. The Chairman of the National Coal Board is Chairman of the National Consultative Council, the divisional chairman of the divisional council, the area general manager of the area council, and the colliery manager of the colliery consultative committee.

Questions relating to wages, terms and conditions of employment, and other matters which are properly the subject of negotiations between organizations of employers and workmen under the conciliation machinery are excluded from the scope of the consultative machinery.

At the colliery level experience has varied. Some committees have been very successful, others, however, have failed either owing to lack of leadership from the management or to insufficient support from the workmen.

A better understanding of consultation will no doubt develop in time. It is important that it should have the backing of the union at all levels as, without this, success is impossible.

The Board's plan for the future development of the coalfields involves the closing down of a number of uneconomic collieries, the reorganization or reconstruction of others in whole or in part, and the sinking of new pits. Inevitably this will mean that some workmen will be surplus to requirements but the great majority will be found jobs at other collieries. In some districts it will mean the transfer of workmen to collieries many miles away. The housing and social problems will be considerable.

In such matters as these it is vital that there should be the fullest consultation with the appropriate unions as only with the cooperation of the workmen can the best possible results flow from these plans.

V

CONCLUSION

Complete conciliation machinery has been established for over 90 per cent of the employees in the industry but that in itself is only the beginning. The Board and the appropriate trade unions have shown their faith in it. So have many of the workmen but there are still some who resort to strike action (not backed by the unions) which can only produce negative results as negotiations cannot proceed until work is resumed. It is the responsibility of the unions to see that their members fully understand the agreed procedure for settling disputes.

As regards negotiation the unions have made it clear that they desire national agreements, but so far there has been little sign that they have appreciated that many local or district customs cannot be perpetuated under such arrangements. It would seem that some of those customs will have to go.

Another point which would seem worth consideration is the desirability of consolidating many of the existing agreements. No doubt workmen who have been in the industry for many years understand which agreements, or parts of agreements, governing their wages and conditions of employment apply to them. On the other hand new entrants must find the position extremely complicated. Questions frequently arise as to which agreement is to prevail on a particular point.

Improvements in the wage structure will have to be developed gradually but the unions themselves have a responsibility in this matter and they could make a useful contribution to this end.

Joint consultation exists for improvements in production, health, safety, and welfare under which a workman can feel that he is playing his part in the more efficient performance of his work and is making his contribution to the solution of problems affecting his own colliery and the industry as a whole.

The machinery which has been set up for the purpose of creating good labor relations is not in itself sufficient. It is the spirit which counts and that will be fostered only by inspired and sympathetic leadership.

PARLIAMENTARY, MINISTERIAL, AND JUDICIAL CONTROL OF NATIONALIZED INDUSTRIES IN GREAT BRITAIN

CHARLES WINTER*

In establishing a series of public business corporations, care has been taken to allot them a suitable status in the constitution and in fixing that status a carefully adjusted system of controls has been devised. These controls have been established in relation (a) to Parliament which is responsible for the creation of the particular corporation; (b) to the minister designated by Parliament as ultimately answerable to Parliament for the working of the corporation; and (c) to the judiciary in connection with its task of interpreting and enforcing the law of the land.

I

PARLIAMENTARY CONTROL

A. The Creating Statute

The first opportunity for determining the extent of parliamentary control over a public corporation occurs in the consideration of the bill which when passed by Parliament becomes the creating statute defining the scope of the activities entrusted to the public corporation whether as a body with paramount power (such as the National Coal Board), or as a central body aided by ancillary area organizations (such as the British Transport Commission with its six Executives responsible for railways, docks, and inland waterways, road passenger transport, road haulage, hotels, and London transport; the British Electricity Authority with its fourteen area boards; and the Gas Council with its twelve area boards), or as a central body holding the securities of subsidiary publicly owned companies (such as the Iron and Steel Corporation). The usual stages in the preparation of a bill are the formulation of instructions by the state department concerned for submission to the parliamentary counsel who drafts the bill which is introduced in the House of Commons by the responsible minister. In its passage through that House and subsequently through the second chamber, the House of Lords, there is opportunity for discussion by the members of those Houses and they share the responsibility for fixing the scope of the activities of the corporation set up to control the particular business or industry and the powers of any subsidiary corporations needed for that purpose.

* LL.M. (London), of Gray's Inn, Barrister-at-law. Member of the Council of the Institute of Public Administration and Chairman of the Publications Committee of the Institute. Author, CHILDREN AND YOUNG PERSONS UNDER THE LAW (London, 1949); THE ADOPTION ACT 1950, ANNOTATED (London, 1951). This article is part of the relevant chapters of the author's book on *Public Business Corporations*, now in course of preparation. It is included in this symposium by the kind permission of the publishers, Stevens and Sons, Ltd., London.

An examination of the Coal Industry Nationalisation Act, 1946,[1] which may be regarded as the model for the creation of a public business corporation, reveals the main principles applied by Parliament for the control of the corporation. Under that Act the National Coal Board is established and its main duties are defined, namely, to work and get coal in Great Britain, to secure the efficient development of the coal-mining industry, and to make supplies of coal available in such qualities and quantities and at such prices as are best calculated to further the public interest. The Board is also to secure the safety, health, and welfare of its employees and utilize their practical knowledge and experience in the organization and conduct of operations; and to balance revenues against outgoings on an average of good and bad years.

The powers of the responsible minister (the Minister of Fuel and Power) in relation to the Board are carefully defined. He is to give the Board directions of a general character as to the exercise of its functions in matters appearing to him to affect the national interest. The Board in framing programs of reorganization or development involving substantial outlay on capital account and in exercising its functions as to training, education, and research is to act on lines settled with the approval of the Minister. The Board is to furnish the Minister with information (including returns and accounts) required by him with respect to the property and activities of the Board.

Consumers' councils are set up and provision is made for the consideration of their reports by the Minister. The Minister is empowered to give the Board directions for the remedying of defects notified to him by the councils. The councils are to make annual reports to the Minister and their reports are to be laid before Parliament.

The transfer of assets to the Board and the payment of compensation therefor is carefully regulated. Financial provisions deal with advances by the Minister to the Board, the borrowing powers of the Board, the establishment of a reserve fund, the keeping and auditing of accounts, and the issue of stock.

The Board is to establish machinery for the settlement of the terms and conditions of employment of its employees. It is not to be exempt from taxation. It is to make an annual report to the Minister and he is to lay the report before Parliament.

Further considerations arise in connection with later statutes affecting other industries. One important feature is the establishment of ancillary area organizations with separate corporate existence to work in conjunction with the central body. Thus, under the Transport Act, 1947,[2] Section 5, public authorities known as Executives are authorized to assist the British Transport Commission in the discharge of its functions. Six Executives have been appointed under this authority, *viz.*, the Railway Executive, the Docks and Inland Waterways Executive, the Road Passenger Transport Executive, the Road Haulage Executive, the London Transport

[1] 9 & 10 GEO. 6, c. 59. [2] 10 & 12 GEO. 6, c. 49.

Executive, and the Hotels Executive. Under the Electricity Act, 1947,[3] Section 1, fourteen Area Electricity Boards have been set up to deal with the distribution of electricity supplies under the Central Electricity Authority which is responsible mainly for the generation of the electricity supply. Under the Gas Act, 1948,[4] twelve Area Gas Boards are the dominating authorities for the supply of gas in their respective areas and they are assisted by the Gas Council which acts as a co-ordinating authority. Under the Iron and Steel Act, 1949,[5] the Iron and Steel Corporation functions as a company holding the securities of some ninety-six subsidiary companies engaged in working iron ore and producing steel.

The interests of consumers are protected in the case of transport by the establishment of a Central Transport Consultative Committee for Great Britain and by Transport Users Consultative Committees set up for such areas as the Minister of Transport may direct.[6] In the case of electricity and gas, a Consultative Council is established for each of the subsidiary areas.[7] For iron and steel, there is set up the Iron and Steel Consumers' Council, which is empowered to appoint committees to consider matters affecting the interests of particular classes of consumers.[8]

The compilation and review of charges schemes assumes particular importance in the case of the transport industry and a special tribunal—the Transport Tribunal—has been created to deal with that subject.[9] In regard to electricity, the scope of the manufacturing powers of the British Electricity Authority in respect of electrical plant and fittings is limited to supplies for the home market,[10] and the obligation to supply electricity to railways for purposes of haulage or traction is made a responsibility of the Authority and is subject to ministerial regulations fixing the terms and conditions of that supply.[11] As regards transport, restrictions are placed on the carriage of goods for hire or reward otherwise than by the British Transport Commission. This particularly affects holders of A or B licenses[12] who need a permit from the Commission if their vehicles operate at a distance of more than 25 miles from their respective operating centers.[13] In respect of iron and steel, persons engaged in iron or steel production, their businesses not having been acquired by the Iron and Steel Corporation, are (with exceptions for businesses already in existence on November 24, 1949) not allowed to carry on their activities without a license from the Minister of Supply if their annual production amounts to 5,000 tons or more.[14] In the case of the new development of carbonization, provision is made for consultation between the various bodies affected, *viz.*, the National Coal Board, the Gas Council, the Area Gas Boards, and the Iron and Steel Corporation.[15]

[3] 10 & 11 GEO. 6, c. 54. [4] 11 & 12 GEO. 6, c. 67. [5] 12 & 13 GEO. 6, c. 72.
[6] Transport Act, 1947, §6. [7] Electricity Act, 1947, §7; Gas Act, 1948, §9.
[8] Iron and Steel Act, 1949, §6. [9] Transport Act, 1947, pt. V. [10] Electricity Act, 1947, §2(3).
[11] *Id.* §49.
[12] Holders of A licenses carry goods of other persons, and holders of B licenses carry their own goods as well as those of other persons.
[13] Transport Act, 1947, §§52-55. [14] Iron and Steel Act, 1949, §§29, 30.
[15] See Gas Act, 1948, §§8 and 51; Iron and Steel Act, 1949, §47.

The control exercised in relation to the bill for the creating statute takes the form of amendments to the bill moved either by or on behalf of the minister concerned as a result of criticism expressed in debate or sometimes secured by a vote of the House of Commons or the House of Lords in spite of the attitude of the minister. Where strong views are expressed by members of either House, the minister frequently makes concessions in order to secure the passage of the bill, and Parliament as a whole thus takes responsibility for framing the general policy in regard to the scope of the activities allotted to the corporations brought into being by the creating statute.

B. Consideration of Annual Reports of Corporations

The standard provision as regards annual reports of public business corporations is that the particular corporation shall at the end of each financial year report to the appropriate minister on the exercise and performance of its functions and on its policy and programs, and the minister is under obligation to lay a copy of every such report before each House of Parliament. The report is to set out any direction given by the minister to the corporation unless he has notified the corporation his opinion that it is against the national interest or in some cases (*e.g.*, electricity, transport, gas, iron and steel) against the interests of national security to do so.[16] In the case of the Iron and Steel Corporation, a direction can also be omitted from the report if the minister accepts the contention of the corporation that it is contrary to the commercial interests of the corporation to publish it.

Particular attention has been paid by the major corporations to the need for publishing substantial reports in fulfillment of the statutory requirement, the more so as the reports are presented to Parliament and opportunity is afforded by the Government for general debates on their contents. The National Coal Board set the example of what a report should contain in its second report of 1948 and that example was followed by the British Transport Commission and the British Electricity Authority. These reports contain from 300 to 400 pages in octavo book form, about one-half consisting of well compiled chapters setting out the progress made in connection with the various activities of the corporation, together with its organization and plans for development, and the second half containing the yearly accounts and appendices giving general statistics in relation to the work of the corporation. These reports are reviewed in the press and members of both Houses of Parliament study them in readiness for the debates thereon. The inauguration of a number of public corporations by Parliament dominated by a socialist government has taken place during a difficult period of post-war economic fluctuations, and criticism of their working has been freely expressed by members of both Houses of Parliament mainly because many of the corporations have not been able to show trading profits or to avoid increased charges for their products or services. There has been an insistent

[16] Coal Industry Nationalisation Act, 1946, §54; Transport Act, 1947, §4; Electricity Act, 1947, §8; Gas Act, 1948, §10; Iron and Steel Act, 1949, §4.

demand for the setting aside in Parliament, particularly in the House of Commons, of adequate time for debate of each of the yearly reports of the respective corporations.

When the first annual report of the National Coal Board for the year 1948 was considered in the House of Commons,[17] the then Minister of Fuel and Power (Mr. Gaitskell) commented on the relationships between Parliament, the Minister, and the Board, stressing the fact that the powers of the Minister were limited in relation to the affairs of the Board, the Minister being accountable to Parliament for the way in which he discharged the powers conferred on him and for anything done by civil servants acting in his name and subject to his authority. He pointed out that the creating Act conferred two kinds of powers on the Minister, *viz.*, (a) specific powers as regards capital investment, research, training, education, and health and safety of the workers and, on the financial side, direction of capital charges and interest, form of accounts, and appointment of auditors; and (b) general powers, first as to direction in matters affecting the national interest and secondly as to the appointment of members of the Board. The Minister would thus be responsible for the use made of his specific powers and, in relation to the general powers, he would be answerable for the general success or failure of the enterprise but not for the day-to-day management and administration of the industry by the Board or the operations of the Board in the provision and selling of coal or the management of ancillary activities. He concluded that, if, after consideration of the annual reports of the Board, Parliament considered that the Board had seriously failed to carry out the duties and functions imposed upon it, Parliament could call the Minister to account for failure to appoint suitable members to the Board or to issue suitable general directions to the Board. In the last resort, Parliament could, by legislation, alter the powers and functions of the Board.

This represents the constitutional position as regards the relationships discussed. Otherwise, debate on an annual report of a public corporation provides an occasion for the review by Parliament of the affairs of the corporation in some such manner as once a year the shareholders of a company discuss the report issued by the company directors. Where constructive criticisms are made in the course of the debate, the minister concerned can take cognizance of them and at a suitable time bring them to the notice of the responsible corporation. But, if he does not accept the criticisms, he can by use of the government political majority avoid giving effect to them. Parliamentary control is thus not absolute. Strong pressure can be brought to bear upon the minister during the debate in the hope that he will promise to take some action on the point raised but there is at the present moment no method by which Parliament can enforce or supervise the application of measures necessary to introduce any reforms which may be advocated. The practical value of discussions on annual reports thus resides mainly in the fact that the debates are studied by the government departments who advise ministers as to future action and by the staffs

[17] 469 H. C. DEB. 1419 *et seq.* (5th ser. 1949).

of the various corporations who are thus able to assess how far their policies are likely to be accepted by the public and what reforms should be undertaken in order to secure a relaxation of future criticism.

The position taken by the responsible ministers in relation to the debates on these annual reports of corporation has been that of defenders of the policy carried out by the corporations concerned, and ministers have been at pains to counter expected criticisms in advance. Thus in the debate on the 1949 report of the National Coal Board,[18] the Minister of Fuel and Power stressed the effort made to increase production, the total of 202 million tons obtained showing an increase of 28 million tons over the figure for 1945 and 5 million tons over that for 1948. As regards the trading loss incurred, the Minister pointed out a progressive improvement in as much as in 1947 there was a loss of £23½ million, in 1948 a surplus of £1½ million, and in 1949 a surplus of £9½ million. He stated that the Board hoped to liquidate the outstanding loss in 1950 and to start building up a reserve. In the debate[19] on the first reports of the British Electricity Authority and the Area Electricity Boards covering the period 1947 to 1949, the Minister of Fuel and Power drew attention to two special difficulties which had been met, *viz.*, (1) delays in securing deliveries of new generating plant, and (2) the curtailment of supply by load-spreading and load-shedding. As regards financial results, he pointed out that the British Electricity Authority incurred a loss of £600,000 on current supplied to area boards whereas the boards made a surplus of some £5 million on dealing with industrial and domestic consumers, the net surplus thus being £4,400,000 on a total revenue of nearly £198 million.

As regards transport, in the course of the debates in the House of Commons on the annual reports for 1948 and 1949,[20] the Minister of Transport (Mr. Barnes) referred to the world-wide problem of railway finance, few systems (including even those in the United States and Canada) making a profit. He confirmed the government policy of making up the loss by the process of integration (*i.e.*, exercising the utmost economy while securing efficiency and cutting out all waste) rather than by the grant of subsidies which would transfer from the industry to the taxpayer the burden of making up the loss. He did not consider it feasible to repudiate the interest charge on British Transport Commission stock which worked out at about 3 per cent and could not be considered as heavy. He stated that it had been necessary to extend by a further period of two years the statutory time-limit of two years from the passing of the Transport Act, 1947, for the production of general charges schemes. He pointed out that the railways had suffered from road competition, partly from A and B license holders (entitled to carry other persons' goods either generally or together with their own goods) who had a fleet of some 129,000 vehicles as against the Road Haulage Executive's fleet of 35,000 vehicles, and partly from C

[18] 477 *id.* 1557 *et seq.* (5th ser. 1950).
[19] 478 *id.* 247 *et seq.*
[20] *Id.* at 2056; 479 *id.* 1347 *et seq.*

license holders (entitled to carry their own goods in their own vehicles) who had increased their fleet from some 590,000 vehicles in 1948 to some 699,000 vehicles in June 1949.

C. Questions Asked by Members in Parliament

The method of eliciting information from ministers by questions asked by members of the House of Commons or the House of Lords is one that has developed to such an extent that it has become a significant part of parliamentary procedure. The greatest development has taken place in the House of Commons where a time for answering questions is allotted regularly at the commencement of proceedings. In the House of Lords questions are occasionally (but not frequently) put and answered in much the same way as in the House of Commons, the answers being given by a member of the House designated by the government for that purpose since the questions cannot be put direct to ministers who usually sit in the lower House, the House of Commons. The main interest, therefore, from the point of view of parliamentary control arises from the procedure of the lower House.

It is the practice of the House of Commons to allow members to ask questions of ministers relating to

(a) the public affairs with which they are officially connected;
(b) proceedings pending in Parliament; or
(c) matters of administration for which they are responsible.[21]

The ministers either reply orally in the House or, if the answers are lengthy, circulate written replies with the printed debates. This practice subjects ministers to constant challenge on matters of administration and in order to relieve them from this burden in relation to the activities of public corporations the principle has become established that they should not be subject to questions on the day-to-day management of the corporations. Sir John Anderson in a Romanes lecture delivered in May, 1946, on the subject of public corporations stated the principle as follows: "In regard to matters falling within the Minister's power of control, he would be liable to be questioned in Parliament in the usual way. On the other hand, in regard to matters declared to be within the discretion of the authority, the Minister would be entitled, and indeed bound, to disclaim responsbility." The principle is designed to avoid the criticism levied against state departments that they are afraid to take risks and are slow in movement largely for the reason that they are accountable to the House of Commons for their actions. Public corporations being highly commercial, industrial, and economic bodies, are better run if free from meticulous accountability to political channels, which would curb their commercial enterprise and hamper the recruitment of the best men to their service, since such men are likely to resent submission to a process of constant pin-pricking by way of parliamentary questions.[22] In carrying this principle into effect, ministers have incurred considerable unpopu-

[21] See T. ERSKINE MAY, PARLIAMENTARY PRACTICE 334-338 (London, 14th ed. 1946).
[22] 448 H. C. DEB. 454-456 (5th Ser. 1948).

larity and members have constantly expressed their disappointment and dissatisfaction when ministers have refused to answer their questions or the clerks at the table have declined to put them on the order paper on the ground that they repeated in substance questions already answered or to which answers had already been refused. As a result of considerable pressure on the part of members, the rule against the repetition of questions to which answers have already been refused has been relaxed and those questions are allowed provided that, in the opinion of the Speaker which is not open to discussion in the House, the matters raised are of sufficient public importance to justify their appearance on the order paper.[23] The minister can still use his discretion as to whether he will answer the question as he may very well be guided by considerations of which the Speaker has no knowledge.

The general principle which has been established is that questions can be put to ministers in relation to public corporations

(a) where the minister has done something; and
(b) where the minister has power to do something and has not used the power.

In effect the specific powers of the ministers vary with the different corporations but in each case they cover a wide range including the appointment, salaries, and conditions of service of board members; programs of research and development and of education and training; borrowing by the boards; the form of accounts and audits; annual reports; pension schemes and compensation for displacement; the appointment of consumers' councils; and various matters connected with organization and operation.

Members who question ministers usually do so either to obtain factual information of a general or statistical kind which can be produced from the departmental records or to ventilate grievances in order to ascertain the remedies available. Questions which come within the former category are not usually resisted by the minister but it occasionally happens that the information is kept by the particular public corporation and not by the ministry. In such cases, the minister may obtain the information and pass it on to the questioner or he may state that the required particulars are not available in his department. For instance, the Minister of Transport in answering a question on one occasion[24] about the salary of the chairman of the Port of London Authority stated that he gave the information by courtesy of the Port of London Authority. Questions within the second category relating to grievances receive varying treatment from ministers. Sometimes the minister will explain the policy out of which the alleged grievance arises. At other times he will avoid answering the question on the ground that the matter is one for settlement by the public corporation concerned. In such a case the person aggrieved cannot rely on any parliamentary control over the corporation and is left to his own

[23] Statement by Speaker in House of Commons Debates, 451 H. C. DEB. 1635-1643 (5th ser. 1948).
[24] 421 H. C. DEB. 807-808 (5th ser. 1946).

resources to make his grievance known. He can approach the corporation direct or through the member of Parliament representing his locality. If he fails to obtain satisfaction, he can submit his grievance to the appropriate consumers' council, which can, if it so decides, pass on the complaint to the minister who has powers to direct the public corporation to remedy the defect disclosed by the representations.[25]

The following examples of answers given to questions illustrate the principles explained above. The references are to House of Commons debates containing answers.

How many cases of personal injury by explosives in domestic coal have been reported to the Minister's department, in how many cases was compensation paid and by whom? *Answer:* Thirty-three cases, though there is no statutory obligation of report to the Minister. The Minister said he had no information on the second and third parts of the question.[26]

How many tons of opencast coal were sold during the year ending March 31, 1948, and at what price? *Answer:* The tonnage was 10,511,000 and the average price was 39s.7d. a ton.[27]

Whether steps are being taken to make dust suppression compulsory at all pits? *Answer:* Measures are being developed under a voluntary scheme agreed upon by the Minister of Fuel and Power with the National Coal Board and the National Union of Mineworkers.[28]

Question asked for a statement on the closing of pits in the Yorkshire area. *Answer:* Four pits have been closed. Over the next ten years the winding of coal from about twenty pits may cease. Final plans will be settled by the National Coal Board as part of its long-term reorganization plans for the country.[29]

On what principles are men to be selected by the National Coal Board for dismissal as redundant? *Answer:* This is a matter for the Board to decide.[30]

Whether arrangements would be made to publish the amounts paid and the names of those to whom payment had been made by nationalized undertakings for loss of office and emoluments? *Answer by the then Lord President of the Council (Mr. Herbert Morrison):* The settlement of individual cases of compensation for loss of office is a matter of the day-to-day administration of the boards of the socialized industries.[31]

The Minister of Fuel and Power answered one question relating to the effect of the cut in the capital investment program and its effect in curtailing electricity supplies in rural areas, and three questions dealing with the steps taken by the Minister's department to increase manpower in coal pits, the terms upon which the National Coal Board markets coal from opencast mining as agents of the Minister, and the additional annual tonnage of coal per man year due to the introduction of machinery.[32]

Question asking for a statement on the posters displayed by the British Electricity Authority headed "Another New Power Station" (The imputation was that the posters were misleading as none of the new power stations advertised had so far been built). *Answer:* This deals with a matter affecting the day-to-day administration of the Authority on which it would not be desirable for the Minister of Fuel and Power to comment. The

[25] See, for example, Coal Industry Nationalisation Act, 1946, §4.
[26] 453 H. C. DEB. 30 (5th ser. 1948) (written answer).
[27] 453 *id.* 577.
[28] 453 *id.* 123 (written answer).
[29] 454 *id.* 556.
[30] 456 *id.* 33 (written answer).
[31] 476 *id.* 1290 (5th ser. 1950).
[32] 477 *id.* 1829-33.

Minister said that on matters of general policy he was always ready to answer questions.[33]

Request to Minister of Fuel and Power for a statement on the general policy of advertising by the British Electricity Authority. The Minister said that while advertising was a matter of commercial management for which he had no direct responsibility, since the question appeared to raise a matter affecting the public interest, he had, without creating a precedent inconsistent with the present practice, asked the Authority to inform him about its policy in the matter. The policy was that it wished (a) to assure customers that it was bringing plants into commission as quickly as it could, and (b) to induce householders and office workers to help industry by limiting their use of electricity during the hours of peak demand.[34]

D. Parliamentary Debates on General or Particular Matters Affecting Public Corporations

Various opportunities for debating matters affecting public corporations arise in the course of the parliamentary program which is usually fixed by the government after consultation with the leaders of the opposition. The setting up of a series of public corporations to deal with industries newly nationalized has attracted a considerable amount of parliamentary attention. In the earlier stages, from 1946 onwards, the socialist government with a large majority could impose its will upon Parliament with greater ease than has been possible since its re-election in February 1950 with a very small majority. It is not surprising, therefore, to find that, whereas formerly the amount of time allocated for debates on the public corporations was somewhat limited, the present practice shows signs of relaxation and there is a more generous allocation of parliamentary time for the purpose of considering the many issues raised by members many of whom are extremely critical of the methods used by the corporations and dissatisfied with their practical results. Debates thus take place in the House of Commons and in the House of Lords during the parliamentary session and divide themselves into two main classes (a) full general debates extending over the greater part of a day or in a few cases over several days; and (b) short debates on particular matters.

As regards full general debates, these may be the basis for discussion of principles affecting public corporations generally or of the activities of a particular corporation. Such debates may take place on the consideration of the King's speech at the opening of a parliamentary session, on supply days when departmental estimates are under consideration and the minister concerned has responsibilities for a particular corporation, or on days allocated by the government either for the purpose of discussing the annual reports of the various corporations or in view of a general desire by members to discuss matters affecting one or more corporations. Debates in connection with the King's speech took place in November, 1948,[35] when consideration was given to an amendment regretting the persistence by the government in a policy of nationalization which had imposed heavy burdens on consumers and taxpayers

[33] 480 *id.* 1364.
[34] 481 *id.* 3.
[35] 457 *id.* 683 *et seq.* (5th ser. 1948).

and was impeding the enterprise essential to recovery. In the debate on the King's speech in November, 1950, there was no prolonged discussion of the nationalized industries but they were referred to in both Houses of Parliament, *viz.*, in the House of Commons when regret was expressed that there was no reference in the Speech to methods whereby Parliament could keep control over nationalized industries and suggestions were made for reducing the losses on transport,[36] and also in the House of Lords when the government was criticized for failing, as regards nationalized industries, to hold the balance between the advantages on the one hand of assured financial resources and a monopoly and the disadvantages on the other hand of inflexibility and loss of competition.[37]

On supply days when the estimates of particular departments are examined, the opposition have an opportunity of choosing subjects needing debate and can where they so desire select the activities of a particular corporation. Thus in March 1950[38] when votes on account were under consideration, the House of Commons discussed the transport industry generally. Later when the estimates of the Ministry of Transport were considered, the House debated the subject of road haulage[39] and when the estimates of the Ministry of Fuel and Power were in issue the subject chosen was the working of opencast coal.[40] A further discussion took place on the subject of civil aviation and the powers of the British Air Corporations.[41] Debates also took place in the House of Lords on the policy of the British Transport Commission[42] and on redundant staff arising out of the merger of the staffs of the British Air Corporations.[43]

As regards the allocation of special days for discussions, the Lord President of the Council undertook in March 1950[44] to allocate three ordinary days before the end of July for debates on socialized industries and in due course debates took place on the annual reports of the National Coal Board, the British Electricity Authority and the Electricity Area Boards, and the British Transport Commission.[45] General debates on the efficiency and accountability of the socialized industries also occurred in the House of Lords[46] and the House of Commons,[47] and a special debate was held on an opposition motion in the House of Commons as to the nationalization of the iron and steel industry.[48]

As regards short debates on particular matters, these arise at frequent intervals on motions for the adjournment of the House of Commons, on prayers in either House of Parliament for the annulment of subordinate legislation (such as regulations) made by the ministers concerned and laid on the table of the two Houses, and on

[36] 480 *id.* 265 (5th ser. 1950).
[37] 169 H. L. DEB. 85 (5th ser. 1950).
[38] 472 H. C. DEB. 1091 *et seq.* (5th ser. 1950).
[39] 474 *id.* 1482 *et seq.*
[40] 477 *id.* 2269 *et seq.*
[41] 475 *id.* 56 (5th ser. 1950) (written answer).
[42] 166 H. L. DEB. 242 *et seq.* (5th ser. 1950).
[43] 168 *id.* 313 *et seq.*
[44] 473 H. C. DEB. 569 (5th ser. 1950).
[45] 477 *id.* 1557-1675 (5th ser. 1950); 478 *id.* 247-313, 2053-2168.
[46] 168 H. L. DEB. 41-126 (5th ser. 1950).
[47] 478 H. C. DEB. 2795-2919 (5th ser. 1950).
[48] *Id.* at 1719-1836.

private bills introduced in Parliament by the nationalized industries in order to secure local improvements or to acquire private property. Members of both Houses have been astute to seek occasions for debating a variety of subjects affecting public corporations by means of these short debates. In the House of Commons, members have sometimes used their opportunities to raise on the adjournment of the House matters arising out of questions refused at the table of the House or unanswered by the ministers concerned. Attention has been drawn in this way to the vexed question of dwelling-houses tied to railways and the difficulties arising when railway employees on retirement have been asked to give up their houses for use by other railway employees.[49] Other matters raised in this way include rural bus services on uneconomic routes,[50] road passenger transport in Scotland,[51] and road haulage.[52] Prayers for the annulment of regulations have also frequently provided opportunities for debate. Thus the motion by the Minister of Transport for approval of the Draft Transferred Undertakings (Compensation to Employees) Regulations 1950 led to an argument how far road haulage was a monopoly of the British Transport Commission.[53] Similarly a prayer to annul the Electricity (Severance Compensation) Regulations 1950 made by the Minister of Fuel and Power provided an opportunity for ventilating the grievance of local authorities arising out of the delay in distribution of moneys from the compensation fund without any payment of interest in respect of the delay.[54] Further opportunities for short debates are afforded when a public corporation introduces a private bill to carry out local works in the nature of improvements of its system of working or to acquire land in particular localities for that purpose. These bills must pass their second reading stage on the floor of the House in the Commons and members can block the second reading until an opportunity is granted in the parliamentary program for debate. Thus when the British Transport Commission's private bills of 1949 and 1950 were before the House of Commons the Speaker of the House in the first case and the Deputy-Speaker in the second case ruled that the debate might extend beyond the contents of the bill but should remain related to its purpose and not traverse the constitution and powers of the Commission which had already been settled by Parliament.[55] In the case of the 1949 bill, the general questions discussed included the high cost of passenger fares on the railways as compared with the fares charged by the coach services, the need for adjustments in workmen's and school children's fares on the railways, the overcrowding of London transport, and the need for reducing redundant railway staff. In the case of the 1950 bill, the debate ranged over the financial problem of the railways and raised the question whether the deficit was to be met by an increase in charges. The Minister of Transport (Mr. Barnes) gave

[49] *Id.* at 828-838.
[50] 474 *id.* 564-572.
[51] 478 *id.* 2188-2196.
[52] 474 *id.* 1262-1272, 1482-1540.
[53] 476 *id.* 2338-2356; 167 H. L. DEB. 1236-1241 (5th ser. 1950).
[54] 478 H. C. DEB. 2173-2188 (5th ser. 1950).
[55] 461 *id.* 1771 *et seq.* (5th ser. 1949); 473 *id.* 655 *et seq.* (5th ser. 1950).

a full account of the progress of the discussions which had taken place in order to arrive at a solution of the problem and explained the increase in costs (such as higher prices of steel and timber) which had to be met. He argued that Parliament must make up its mind whether the situation was to be adjusted by an increase in the form of a subsidy which would fall on the taxpayer or by the normal process followed by industrial undertakings of adjusting charges to the cost of the services they themselves received. The only check on the debate enforced by the Deputy-Speaker was discussion of the question of London passenger transport fares which was being considered by the Transport Tribunal at that moment and was therefore ruled out of order as being *sub judice*.

E. Reports of Parliamentary Investigating Committees

Two committees of the House of Commons are charged with the duty of investigating the expenditure of public monies, *viz.*, the Public Accounts Committee and the Estimates Committee. The Public Accounts Committee is a sessional committee appointed by the House under standing order 74

> (a) to examine the appropriation accounts and re-check the appropriation audit in order to ensure that no sums have been expended on purposes other than, or in excess of, those for which they were granted by the House;
> (b) to report on any excess vote presented; and
> (c) to recommend improvements in the form and method of the national accounts.

The committee maintains close relations with the Treasury and the Comptroller and Auditor General whose reports serve as a basis for their inquiries.[56] The Estimates Committee is a sessional committee of the House, its duties being to suggest the form in which the estimates should be presented for examination and to report what, if any, economies consistent with the policy implied in those estimates may be effected therein. The work of the committee does not begin until the estimates have been presented to the House when their form is practically final. Proposals to secure earlier submission of the estimates to the committee and to bring the policy of the estimates within its purview have been resisted as clashing with the doctrine of ministerial responsibility.[57]

These two committees are already overloaded with a considerable volume of work and it has been suggested that a new committee should be set up advised by a new official similar to the Comptroller and Auditor General with a general responsibility for investigating the accounts of the nationalized corporations. This suggestion has been resisted by the government on the grounds explained by the Lord President of the Council[58] that it would detach the members of the boards of the public

[56] GILBERT CAMPION, INTRODUCTION TO THE PROCEDURE OF THE HOUSE OF COMMONS 279 (London, 2d ed. 1947); T. ERSKINE MAY, PARLIAMENTARY PRACTICE 644 (London, 14th ed. 1946).
[57] CAMPION, *op. cit. supra* note 56, at 280. [58] 478 H. C. DEB. 2814 (5th ser. 1950).

corporations from their duties and subject them to harassing cross-examination by a parliamentary committee and would tend to diminish rather than encourage their initiative in the enterprise for which they are responsible. If, however, members of Parliament are to carry out their duties as guardians of public expenditure, there seems no valid reason why they should not be granted an opportunity through the instrumentality of a committee of this nature to investigate the accounts of the public corporations and when occasion arises to criticize expenditure that has been unwisely incurred. It is true that criticism of this nature made long after the event cannot redeem any consequential financial loss but it can issue a timely warning against the continuation of a policy which would be likely to lead to similar losses in the future.

Although the government has not been in favor of regular reviews of the work of public corporations through the medium of the accounts committee, it has conceded[59] the desirability of establishing periodical reviews, say every five or seven years as has been done in the case of the British Broadcasting Corporation. These reviews would be conducted by a body of persons nominated by the minister concerned and that body would include a limited number of members of Parliament. In this way the reviewing body would be associated with Parliament indirectly without the stricter control of the select parliamentary committee. The reviewing body would make a report which would be available to Parliament and the public, and the government could be questioned in due course by members of Parliament as to how far any recommenadtions for improvement made in the report had been carried out. This suggestion should certainly be put into force as it would enable the reviewing committee to recommend general alterations in the policy and structure of the corporations after mature consideration, thus avoiding meticulous interference with their day-to-day commercial efficiency.

II

MINISTERIAL CONTROL

A. Directions by the Minister

Definite statutory powers of direction have been conferred on the ministers responsible for the public corporations. The model provision is that contained in Section 3 of the Coal Industry Nationalisation Act, 1946, which enables the Minister of Fuel and Power, after consultation with the National Coal Board, to give the Board directions of a general character as to the exercise and performance by the Board of its functions in relation to matters appearing to the Minister to affect the national interest. Similar powers are conferred on the Minister of Fuel and Power in relation to the British Electricity Authority, the Area Gas Boards, and the Gas Council; on the Minister of Transport in relation to the British Transport Commission; on the Minister of Civil Aviation in relation to the British Overseas

[59] *Id.* at 2912.

and the British European Airways Corporations; and on the Minister of Supply in relation to the Iron and Steel Corporation.[60] Further provisions usually require the public corporation concerned to act on lines settled from time to time with the approval of the minister in framing programs of reorganization or development involving substantial outlay on capital account or in the exercise of its functions in relation to training and education of personnel as well as to research. The corporation is also under obligation to afford to the minister facilities for obtaining information with respect to its property and activities and to furnish him with returns and accounts and other information for that purpose. Where the corporation is substantially subsidized by the government, as in the case of the British Air Corporations, the program of activities and the estimated revenue therefrom has to be submitted annually to the minister in order that the amount of annual subsidy may be duly assessed in respect of such activities as the minister sanctions.[61]

These are important powers of direction and the corporation concerned is usually under obligation to include in the annual report of its activities any directions given by the minister in the course of the year unless the minister has notified to the corporation his opinion that it is against the national interest to do so.[62] In fact, these powers of direction have been sparingly used by ministers and the criticism has been advanced that greater use of these powers should be made. Mr. Ernest Davies writing in the *Political Quarterly* in 1950[63] as a member of Parliament stated that ministers, in preference to making use of their statutory powers of direction, took advantage of the existence of the powers to influence the public corporations by consultation, thereby exercising their powers behind closed doors since no information was available to the public as to how far the corporation had acted with or without the advice of the minister. Mr. Herbert Morrison in his capacity as Lord President of the Council has defended this attitude[64] on the ground that the success of the system of dual control of nationalized industries by ministers and corporate boards depends on the maximum harmony between the ministers and the boards. He deprecates the indiscriminate use of directions by the ministers to ride roughshod over the boards. He prefers the government practice of relying upon persuasion by the minister to influence the boards.

Members of Parliament have from time to time recounted difficulties met in the operations of public corporations and have asked the minister concerned what directions of a general character he would give to obviate the difficulties. Thus one typical complaint made by way of question[65] related to delays in the payment of

[60] Electricity Act, 1947, §5; Gas Act, 1948, §7; Transport Act, 1947, §4; Air Corporations Act, 1949, 12, 13 & 14 GEO. 6, c. 91, §5; Iron and Steel Act, 1949, §4.

[61] Air Corporations Act, 1949, §13. The subsidies are payable until the end of the financial year 1955-1956.

[62] See, for instance, the Coal Industry Nationalisation Act, 1946, §54.

[63] *Ministerial Control and Parliamentary Responsibility of Nationalised Industries*, 21 POL. Q. 150 (1950).

[64] *Public Control of the Socialised Industries*, 28 PUB. ADM. 3 (1950).

[65] 467 H. C. DEB. 1795 *et seq.* (5th Ser. 1949).

compensation to road haulage firms whose businesses had been acquired compulsorily by the British Transport Commission. The reply of the Minister of Transport was that he did not consider it necessary to give any direction to the Commission on the matter but, on being pressed by other members of the House to state his reasons, he explained that the delays arose from the need for identifying the property concerned and verifying the legal titles thereto and said the details of any particular case could be submitted to the Commission but under further pressure finally admitted that they could be submitted to him as well. Another question put to the Minister of Fuel and Power[66] asked what directions he proposed to give to the British Electricity Authority to encourage area boards to install diesel plants for the supply of electricity to isolated farms in sparsely inhabited localities. The Minister stated that he could not issue general directions of the kind proposed since it was the duty of the Authority and the area boards to decide what is the best method of supplying electric current to any particular consumer. He added that, if the questioner had any suggestions to make about a special district, he was sure the area board concerned would be glad to consider them. Ministers have thus consistently avoided the giving of directions to public corporations even in cases where the decision to take a particular course of action has manifestly emanated from the minister. This was the case in the application of the proposals of the Clow Committee for a seasonal variation in domestic electricity charges whereby consumers paid a surcharge in the winter for their supply and received a rebate in the following summer, the underlying intention being to induce consumers to use less electricity in winter when the load was greatest and the price high. The Minister of Fuel and Power stated, in reply to a question on the point,[67] that he had not given any directions to the electricity area boards but had asked them to put the recommendations of the Clow Committee into effect. On another occasion when, in the course of an adjournment debate,[68] joint meter reading by the electricity and gas boards in a particular area was advocated in order to save manpower, the Minister of Fuel and Power stated that it would not be proper for him to use his powers of direction on a small matter of this kind and that he could only intervene if strong representations were made to him by one of the consultative councils or if he thought that it was a matter of general policy that affected the national interest. He explained that the electricity and gas councils for the area concerned had decided to carry out separate meter readings as they wished their respective agents not only to read meters but to advise consumers about services and appliances available and take instructions for repairs to plant and apparatus. Again when a member, during an adjournment debate,[69] called attention to hardships suffered by railway employees pressed by the Railway Executive of the British Transport Commission on their

[66] 480 *id.* 1366 (5th ser. 1950).
[67] 457 *id.* 128 (5th ser. 1948) (written answer).
[68] 476 *id.* 824 *et seq.* (5th ser. 1950).
[69] 478 *id.* 831-840.

retirement from service to give up their tied houses for use by other railway employees and argued that a public corporation should not use legal powers of eviction in such cases, the Minister of Transport stated that he could not direct the Railway Executive not to take advantage of the law as provided by Parliament for that purpose. He added that the Executive, faced with the difficulty of shortage of accommodation for its employees, had tried to act reasonably but it sometimes had to resort to powers of reference to the courts for a decision in a particular case.

An examination of the various annual reports issued by the public corporations shows that directions given to the corporations by the ministers have been confined to financial directions on such matters as repayment of capital advances and interest on loans and payment of interim interest to stockholders.[70] The working out of the relations between the ministers and the corporations for which they are responsible would have been clearer to members of Parliament and to the public if the ministers had made greater use of their powers of giving general directions. Important lines of policy would thus have become evident and their incorporation in the annual reports of the corporations would have provided an opportunity for further examination in the light of the results attained.

B. Consultation on Policy

As indicated above, ministers have preferred to rely on consultation and persuasion in relation to public corporations rather than on powers of direction, and Mr. Herbert Morrison in his capacity as Lord President of the Council has supported that preference[71] on the ground that for reasons of national social and economic policy the corporations must do things which they would not do if they were influenced solely by commercial motives. Thus the government may wish a corporation to embark on a project, not necessarily unprofitable, but unpopular or speculative. If the corporation disagrees with the project, in the absence of a formal direction from the minister, it is difficult to see what protection the corporation would have other than a public announcement that the action taken is at the request of the minister. As Mr. Morrison points out, such an announcement would be looked upon as evidence of disharmony between the corporation and the minister and would open the way to political controversy. On the other hand, if the corporation is pressed by the minister to undertake a measure which is likely to result in financial loss, the ultimate reaction may very well be a request by the corporation to the minister to subsidize the loss, which it is the government's general policy to avoid since the corporations are mainly intended to balance expenditure against income over a period of years. A question on this matter was directed to the Minister of Fuel and Power in June 1948[72] when he was asked what steps he had taken to maintain contact with the

[70] See ANNUAL REPORT OF NATIONAL COAL BOARD FOR 1948 App. VI, and FIRST ANNUAL REPORT OF BRITISH ELECTRICITY AUTHORITY FOR 1947-1948 App. 40.

[71] *Public Control of the Socialised Industries, supra* note 64, at 4.

[72] 452 H. C. DEB. 643 (5th ser. 1948).

operations of the National Coal Board and the British Electricity Authority, whether regular consultations were held, and whether individual members of these corporations were free to consult him on matters of policy. The minister replied that he had made a practice of informal contact personally with the chairmen of these corporations at frequent intervals and that consultations with the corporations were held when occasion demanded, but that individual members of the corporations would not be free to consult him on matters of policy, such matters being the responsibility of the corporation as a whole.

It is evident that consultations between ministers and corporations must form an important element in securing the adoption and pursuance of policies designed to enable the corporations to carry out their functions to the best possible advantage of the consumers or users of their products or services, due regard being paid to the avoidance of financial loss. Those consultations must be confidential and it is not a legitimate subject of complaint that they are held behind closed doors. It must be left to the parties concerned, the minister on the one hand and the corporation on the other, to recognize their joint responsibility for the ultimate success of a particular enterprise. If failure ensues, with consequential insolvency, then, in the words of Mr. Morrison, the minister will have to take the lion's share of the blame.

C. Financial Control

The main financial liabilities of a public corporation in respect of capital arise from its obligations to pay compensation for assets acquired by it from other persons and bodies on its creation, and thereafter from the cost of providing capital equipment and working capital for the implementation of replacement or improvement schemes. The corporation is generally authorized to raise the necessary capital by the issuance of stock and the control of the minister concerned acting in concert with the Treasury is applied at various stages in the issuance of the stock. As regards revenue and outgoings, the public corporation is generally expected to achieve a balance taking one year with another. The establishment of adequate ministerial control over the finances of the corporation is obviously an important matter and is usually secured in the following manner by the statute creating the corporation or by regulations made by the minister thereunder.

Taking the electricity industry as a typical case, the Central Authority (the British Electricity Authority) is under an obligation to issue stock, known as "British Electricity Stock," for the purpose of satisfying compensation rights and has a discretion as regards the issue of stock needed for capital works or working capital or the redemption of stock.[73] The amount of stock which may be issued otherwise than for compensation purposes is limited to £700 million and is subject to the consent of the Minister of Fuel and Power and the approval of the Treasury.[74] Stock issued for compensation purposes is guaranteed by the Treasury and, if issued for

[73] Electricity Act, 1947, §40.
[74] *Id.* §39.

other purposes, may be so guaranteed.[75] The manipulation of the stock, including the date, method, and price of issue, the rate of interest, and the conditions for redemption are subject to similar ministerial consent and Treasury approval under the regulations[76] made by the Minister. Since the Central Authority is the main financial agency for the industry, it alone exercises these main borrowing powers to the exclusion of the Area Electricity Boards. The Central Authority and the Area Boards may, however, borrow moneys temporarily for the purposes of their functions subject to the consent of the Minister and the approval of the Treasury or in accordance with any general authority issued by the Minister with Treasury approval.[77] Compensation stock, mostly consisting of British Electricity 3 per cent guaranteed stock 1968-1973, has been issued to a total of (approx.) £342 million, and stock for new money has been issued in the form of £100 million British Electricity 3 per cent stock 1974-1977.[78] If the Treasury is called upon to provide moneys under any of its guarantees, those moneys are repayable by the Central Authority to the Treasury at such rate as the Treasury may fix and in such manner and over such period as the Treasury may determine after consultation with the Minister. A statement as to any guarantee given and as to any sum issued out of the consolidated fund to meet it is to be laid before each House of Parliament.[79]

The Central Authority is under obligation to maintain a general reserve fund, to which the Central Authority and the Area Boards contribute such sums as the Central Authority may determine, and the Minister has power to give directions to the Central Authority as to the establishment, management, or application of the fund or the carrying of sums to the credit of the fund. Area Boards may also establish general reserve funds and may contribute to the funds such sums as the Central Authority may approve. The Central Authority with the approval of the Minister may give the Area Boards directions as to the establishment or management of the reserve funds and the crediting of sums thereto. The main purpose of these reserve funds is to prevent frequent fluctuations in the charges made by the Central Authority and the Area Boards.[80] Surplus revenues of the Central Authority for any financial year may be applied as the Authority may determine subject to any directions which the Minister may give with the approval of the Treasury. Surplus revenues of any Area Board are to be applied for such purposes as the Board with the approval of the Central Authority may determine.[81] The sums chargeable by the Central Authority and the Area Boards to revenue account include the usual trading charges, allocations to the central reserve fund, and provision for redemption of capital and for depreciation or renewal of assets.[82] It is the duty of the Central

[75] *Id.* §42.
[76] Electricity (Stock) Regulations 1948 (S.I. 526).
[77] Electricity Act, 1947, §39.
[78] FIRST ANNUAL REPORT OF THE BRITISH ELECTRICITY AUTHORITY, 1947-1948.
[79] Electricity Act, 1947, §42.
[80] *Id.* §43. [81] *Id.* §44. [82] *Id.* §45.

Authority and the Area Boards to keep proper accounts and to prepare in respect of each financial year a statement of accounts conforming with the best commercial standards in such form as the Minister may direct with the approval of the Treasury. The form of accounts was laid down by the Minister in the Area Boards (Accounts) Direction 1949[83] and included directions as to showing separate items of income and expenditure on revenue account, analyses of income and expenditure, classification of assets and liabilities for the balance sheet, categories of assets and provision for depreciation, book and market values of investments, and outstanding loans to personnel. The accounts of the Central Authority and the Area Boards are audited by auditors appointed in respect of each financial year by the Minister. Statements of the accounts with copies of the auditors' reports are sent by each Area Board to the Central Authority and by the Central Authority to the Minister whose duty it is to lay copies of the statements and the reports before each House of Parliament.[84]

Powers of a similar nature provide for control by the Minister of Transport in relation to the functions of the British Transport Commission,[85] which is assisted by public corporate bodies known as executives who act as agents for the Commission and exercise such functions as are delegated to them by schemes made by the Commission and approved by the Minister.[86] As regards the gas industry, there are similar ministerial powers of control, stock known as British Gas Stock being issued by the Gas Council which is invested with the general duties of advising the Minister of Fuel and Power on questions affecting the gas industry and promoting the efficient exercise by the Gas Area Boards of their functions. The Area Boards are, however, the dominant bodies in this industry and each Board settles its own program of capital expenditure with the Minister who consults the Gas Council before approving the program. Each Area Board notifies its stock requirements to the Gas Council which has power to issue the necessary stock provided that any expenditures on reorganization or development is in conformity with the general program settled by the Board with the Minister.[87] As regards the iron and steel industry, the powers of control are exercised by the Minister of Supply over the Iron and Steel Corporation which is empowered to issue British Iron and Steel Stock and is responsible for securing a balance of revenue against outgoings in respect of its own functions as well as those of the publicly owned companies whose securities it holds.[88] As regards the coal industry, the control powers are exercised by the Minister of Fuel and Power over the National Coal Board which is not however empowered to issue stock since the compensation stock for transferred assets in that case was government stock.[89] Working capital however may be provided by advances by the Minister up to a limit of £150 million for the quinquennium 1946-1951 and thereafter of

[83] FIRST ANNUAL REPORT OF THE BRITISH ELECTRICITY AUTHORITY, 1947-1948 App. 40.
[84] Electricity Act, 1947, §46.
[85] Transport Act, 1947, pt. VI.
[86] *Id.* §5.
[87] Gas Act, 1948, pt. III.
[88] Iron and Steel Act, 1949, pt. IV.
[89] Coal Industry Nationalisation Act, 1946, §21.

such amount as Parliament may determine.[90] Advances made by the Minister up to the end of 1947 totalled £33 million and no further advances were made in 1948, the capital expenditure being financed from the Board's own resources.[91]

D. Consideration of Matters Referred by Consumers' Councils

There has been set up in connection with most public corporations a series of advisory councils under various titles (such as consumers' councils or consultative councils) whose main duty is to ascertain the views of consumers or users of the goods or services provided and to make representations thereon either to the particular corporation or direct to the minister concerned. The members of these councils are appointed by the minister, after consultation with representative interests, as having adequate knowledge of the requirements of those interests and qualifications for exercising wide and impartial judgment on the matters referred to them either by the consumers or users or by the minister or the public corporation itself. The councils make annual reports to the minister who lays them before Parliament, where they can be discussed in the same way as the annual reports of the corporations themselves. Thus, for the coal industry, two consumers' councils are set up, one industrial and one domestic, and there is provision for regional councils which have so far not been appointed.[92] As regards electricity and gas, there is a consultative council for the area of every Area Board as well as local or district committees for each area. There is a link between the council and the Area Board since the chairman of the council is an *ex officio* member of the Board.[93] For transport, there is a Central Transport Consultative Committee for Great Britain and Transport Users Consultative Committees for Scotland, Wales, and London; and the Minister of Transport has powers (not exercised so far) to set up similar committees for such areas as he may direct.[94] For iron and steel, there are to be a Consumers' Council and also committees dealing with the interests of particular classes of consumers either as regards locality or products.[95] As regards broadcasting, there are a regional advisory council in each region to deal with the program policy of the region and other advisory committees dealing with broadcasting services and business operations of the British Broadcasting Corporation. For civil aviation, an Air Transport Advisory Council has been set up in the form of an administrative tribunal under a legal chairman, and committees also function for particular areas.[96]

The consultative council in the case of electricity reports its findings to the Area Board and may, after consultation with the Area Board, make representations to the Central Electricity Authority and further, after consultation with the Central Authority, to the Minister of Fuel and Power. Any defect in the general plans

[90] *Id.* §26.
[91] ANNUAL REPORT OF THE NATIONAL COAL BOARD 133 (1948).
[92] Coal Industry Nationalisation Act, 1946, §4.
[93] Electricity Act, 1947, §7, and Gas Act, 1948, §9.
[94] Transport Act, 1947, §6.
[95] Iron and Steel Act, 1949, §6.
[96] Civil Aviation Act, 1949, 9 & 10 GEO. 6, c. 70, §12.

and arrangements of the Area Board can be remedied by the Minister by means of a notice to the Central Authority which in turn gives the necessary direction to the Area Board. In the case of gas, the consultative council may make representations to the Minister after consultation with the Area Board but without reference to the Gas Council. The Minister can refer any question for inquiry and report to a person appointed by him after consultation with the Lord Chancellor. After consideration of the report, the Minister can give any necessary directions to the Area Board, at the same time sending a copy thereof to the Gas Council. In the case of both electricity and gas, district committees of consultative councils are usually set up. The press is generally admitted to meetings of the council and some councils admit the public to their meetings. The consultative councils deal with consumers' complaints about service or quality and also participate in the formulation of policy and planning. They thus have wider powers than the coal consumers' councils which deal only with complaints and then only if the National Coal Board fails to give satisfaction and some question of principle, such as unfair treatment, is involved.[97] No regional consultative councils have been appointed for the coal industry, as neither the Domestic nor the Industrial Coal Consumers' Council favors such appointments. The coal consumers' councils do not admit the press or the public to their meetings. In the case of transport, the Central Transport Consultative Committee (which can deal with services provided and charges therefor) has made its annual report to the Minister of Transport which mentions various recommendations made by the Committee to the British Transport Commission on such matters as the extension of mechanical handling of goods, the improvement of road transport facilities at docks, and the need for car parking facilities at dormitory stations.[98]

The reason for setting up these consumers' councils is that, since public corporations are invested to a large extent with monopoly powers, special machinery is necessary to enable consumers to air their grievances and, where they are unable to secure redress from the corporations themselves, to bring their complaint ultimately to the notice of the responsible minister himself. The machinery established is, as indicated above, somewhat complex and provides in the last resort for action by the minister in the form of directions to the corporation concerned to introduce remedial measures removing the cause of complaint. As yet the consumers' councils are in an early stage of development and, having set up their organization with the assistance of local committees, they have been active in securing publicity for their work, and establishing liaison with the corporations, on the one hand, and with representative groups of consumers' organizations, on the other. So far there is no evidence of specific direction by the ministers, the ultimate remedy provided by the regulating statutes. The councils for the electricity industry have issued two sets of annual

[97] See Griffith, *The Voice of the Consumer*, 21 POL. Q. 171 (1950); Grove, *The Consumer Councils for Gas and Electricity*, 28 PUB. ADM. 221 (1950).

[98] ANNUAL REPORT OF THE CENTRAL TRANSPORT CONSULTATIVE COMMITTEE FOR YEAR ENDED DEC. 31, 1949 33 (London, 1950).

reports and, though they acknowledge some assistance given by press publicity and local poster advertising, they still feel that something more vital is necessary to make consumers realize that the councils have been established independently of the corporations for the express protection of the consumers.[99] A technique has been established whereby Area Electricity Boards have given required information to the councils and arranged for them to inspect the work of generation as well as supply. Where complaints have been made to the Area Boards, they have frequently been settled to the satisfaction of the parties concerned or explanations have been forthcoming as to why (*e.g.*, owing to cuts in the capital investment program) an immediate solution is not possible. Few councils have found it necessary to refer to the Central Electricity Authority any representation on which conclusions have been referred to the Area Board.[100]

It must therefore be concluded that the powers of ministerial control arising as a result of representations from consumers' councils are more in the nature of an ultimate safety-valve which is available on rare occasions, and it is not to be expected that they will be exercised with any frequency.

III

JUDICIAL CONTROL

A. The Constitutional and Legal Status of Public Corporations

The classical division of governmental powers in the British constitution is among three main organs, *viz.*, the legislature, the executive, and the judiciary.[101] The functions of the executive are exercised through the medium of the government departments and by statutory conferment of specified powers upon local authorities. The public corporations seem to have established their constitutional position as organs of the executive somewhere between the government departments and the local authorities.

On the one hand it has been definitely settled by the Court of Appeal in *Tamlin v. Hannaford*[102] that a public commercial corporation does not rank as a government department enjoying Crown privileges and being fully responsible to the departmental minister concerned. It is thus distinguishable from the General Post Office which is fully controlled by a minister of the Crown (*viz.*, the Postmaster-General). The question in issue in that case was whether a house owned by the British Transport Commission was Crown property exempt from the provisions of the Rent Restriction Acts. The Court decided that it was not so exempt. In the course of the judgment delivered by Denning, L. J., the following explanation of the status of the Commis-

[99] See, for instance, the reports of the South Eastern and Yorkshire Electricity Consultative Councils for 1949-1950.

[100] As an exception, see the report of the South East Scotland Electricity Consultative Committee for 1949-1950, which referred to the Central Electricity Authority the question of the disposal of the general reserve funds in its area.

[101] "The age-long triple classification of governmental functions." E. C. S. WADE, CONSTITUTIONAL LAW 210 (London, 4th ed. 1950).

[102] [1950] 1 K.B. 18 (C.A. 1949); [1949] 2 All E.R. 327.

sion was given. The Transport Act, 1947, brings into being the British Transport Commission, which is a statutory corporation of a kind comparatively new to English law. It has many of the qualities which belong to corporations of other kinds. It has defined powers which it cannot exceed and it is directed by a group of men whose duty it is to see that those powers are properly used. It may own property, carry on business, borrow and lend money, just as any other corporation may do, so long as it keeps within the bounds which Parliament has set, but the significant difference in this corporation is that there are no shareholders to subscribe the capital or to have any voice in its affairs. The money which the corporation needs is raised, not by the issue of shares, but by borrowing, and its borrowing is not secured by debentures but is guaranteed by the Treasury. If it cannot repay, the loss falls on the Consolidated Fund of the United Kingdom, that is to say, on the taxpayer. There are no shareholders to elect the directors or to fix their remuneration. There are no profits to be made or distributed. The duty of the corporation is to make revenue and expenditure balance taking one year with another but not to make profits. If it should incur losses and be unable to pay its debts, its property is liable to execution, but it is not liable to be wound up at the suit of any creditor. The taxpayer would, no doubt, be expected to come to its rescue before the creditors stepped in. Indeed, the taxpayer is the universal guarantor of the corporation. But for him it could not have acquired its business at all nor could it continue for a single day. It is his guarantee that has rendered shares, debentures, and such like unnecessary. He is clearly entitled to have his interests protected against extravagance or mismanagement.

There are other persons who also have a vital interest in its affairs. All those who use the services which it provides and all whose supplies depend on it are concerned in seeing that it is properly run. The protection of the interests of all these persons —taxpayer, user, and beneficiary—is entrusted by Parliament to the Minister of Transport. He is given powers over this corporation which are as great as those possessed by a man who holds all the shares in a private company, subject however to a duty to account to Parliament for his stewardship. It is the Minister who appoints the members of the Commission and fixes their remuneration. They must give him any information he wants and, lest they should not prove amenable to his suggestions as to the policy they should adopt, he has power to give them directions of a general nature in matters which appear to him to affect the national interest (as to which he is the sole judge) and they are then bound to obey. These are great powers but still the corporation cannot be considered as his agent, any more than a company is the agent of the shareholders or even of a sole shareholder. In the eye of the law the corporation is its own master and is answerable as fully as any other person or corporation. It is not the Crown and has none of the immunities or privileges of the Crown. Its servants are not civil servants and its property is not Crown property. It is as much bound by acts of Parliament as any

other subject of the King. It is a public authority and its purposes are public purposes but it is not a government department nor do its powers fall within the province of government.

On the other hand, the public corporation is more closely linked with the responsible minister than are local authorities. The latter are controlled by their council of elected members and they exercise autonomy within the limits of their statutory powers. Their relations with the government departments, though entailing a certain amount of control in specified matters including financial control in the matter of exchequer grants, are more distant than those of the public corporations, to which the minister can give directions on a variety of matters relating to the national interest as well as on all capital development programs.

The new constitutional position of the public business corporation is slowly receiving recognition partly as the result of parliamentary debate and partly as the result of discussion in legal treatises and periodicals.[103] It is to be expected that the courts would in suitable cases (though they are likely to be extremely rare) allow the prerogative orders of mandamus or prohibition, and perhaps even certiorari, to issue against a public corporation as they have done in the past as regards public utility undertakers, so that a corporation could be ordered to carry out a particular duty where no other legal remedy was available or to refrain from a particular act of a judicial nature which was in excess of its powers.[104] In the case of an order of certiorari, the decision of the corporation might well be reviewed in so far as it imposed a particular liability or sought to determine the rights or property of particular persons.[105]

B. Subjection of Corporations to the General Law

Standard provisions in the creating statutes usually set up the public corporation as a body corporate, with perpetual succession and a common seal and power to hold land without license in mortmain. This applies alike to the central corporations and their subsidiaries in the various industries, *e.g.*, the British Transport Commission and its six Executives or the Central Electricity Authority and the Area Boards. Having vested the corporation with its legal status as a corporation, the creating statute generally declares that nothing in its provisions is to be deemed to exempt the corporation from liability for any tax, duty, rate, levy, or other charge whatsoever, whether general or local.[106] Further, having conferred specific powers on the corporation, the creating statute usually declares that those powers relate only to the capacity of the corporation as a statutory corporation and that they are not to

[103] See WADE, *op. cit. supra* note 101; Friedmann, *The New Public Corporations and the Law*, 10 MOD. L. REV. 233, 377 (1947); PUBLIC ENTERPRISE (Robson ed. 1937).

[104] As to prohibition, see The King v. Electricity Commissioners; *Ex parte* London Electricity Joint Committee Co., [1924] 1 K.B. 171 (C.A.), where the Commissioners were restrained from holding a public inquiry because the scheme of electricity supply to be presented at the inquiry was ultra vires as threatening an infringement of the rights of private electricity companies.

[105] Local Government Board v. Arlidge, [1915] A.C. 120.

[106] Coal Industry Nationalisation Act, 1946, §47; Electricity Act, 1947, §11.

be construed as authorizing the disregard by the corporation of any enactment or rule of law. Where the corporation is not, however, subject to the general law on any particular topic, express provision is necessary to establish its exceptional position. Thus special provisions were included in Part V of the Local Government Act, 1948,[107] to exempt railway, canal, and electricity hereditaments from the general liability for the payment of rates and to enable the corporations concerned, *viz.*, the British Transport Commission and the British Electricity Authority, to make payments to rating authorities in lieu of rates which would ordinarily have been payable in respect of the hereditaments concerned.

On the creation of a public corporation, the statutory provisions for the vesting in the corporation of the assets of the transferred undertakings usually provide that the property, rights, liabilities, and obligations of the former undertakers are to vest on the vesting date in the corporation or, where there is a two-tier organization with a central authority and subsidiary area authorities, in such of the authorities as may be designated by ministerial order.[108] Thus the new corporation is substituted for the former undertakers in agreements made before the vesting date except in so far as they are impossible of performance. The new corporation also usually acquires a limited right of disclaiming agreements and leases made within a short period (about two years) before the vesting date where they were not reasonably necessary or were made with an unreasonable lack of prudence.[109]

The creating statute also generally provides that the statutory enactments (including statutes, regulations, and orders) previously applicable to the transferred industry are to apply to the new corporation subject to the adaptations and modifications scheduled to the creating statute. This includes local enactments relating to the industry except in so far as they are inconsistent with or rendered redundant by the operation of the creating statute. Where necessary also the minister is empowered to repeal or amend, by order, any local enactment which is no longer applicable.[110]

C. Limitation of Actions

Although the public corporations are frequently designated in the creating statutes as public authorities,[111] they are not entitled to the full privileges of the Public Authorities Protection Act, 1893,[112] and Section 21 of the Limitation Act, 1939,[113] which prevent legal proceedings (whether actions or prosecutions) being brought against public authorities except within the limit of one year from the date of the accrual of the cause of action, if the proceedings are in respect of any act,

[107] 11 & 12 GEO. 6, c. 26.
[108] See, for example, Electricity Act, 1947, §14; Gas Act, 1948, §17; and Transport Act, 1947, §14.
[109] See Electricity Act, 1947, §18; Gas Act, 1948, §22; Transport Act, 1947, §15.
[110] See Electricity Act, 1947, §57; Gas Act, 1948, §56.
[111] *E.g.*, the British Transport Commission and its executives, under §§1 and 5 of the Transport Act, 1947; the Iron and Steel Corporation under §1 of the Iron and Steel Act, 1949.
[112] 56 & 57 VICT., c. 61.
[113] 2 & 3 GEO. 6, c. 21.

neglect, or default of a servant or agent of the authority. They are, however, granted a modified privilege in that respect in as much as the limitation period of six years which, under Sections 2 and 3 of the Limitation Act, 1939, applies generally as regards actions for contract and tort and certain other actions is shortened to three years so far as they are concerned.[114] It should be remembered, however, that a committee which sat recently under the chairmanship of Mr. Justice (now Lord Justice) Tucker recommended the abolition of the special periods of limitation of actions in respect of public authorities and the new public corporations.[115]

D. Special Tribunal for Transport Charges

The establishment of a special tribunal known as the Transport Tribunal[116] was due in part to the need of a tribunal to undertake duties formerly allotted to two statutory tribunals, *viz.*, the Railway Rates Tribunal and the Railway and Canal Commission set up under the Railways Act, 1921,[117] and the Railway and Canal Traffic Act, 1888,[118] respectively. In addition, the Tribunal became responsible for determining the charges to be made by the British Transport Commission for the services provided by the Commission as well as the terms and conditions applicable to the provision of those services, including terms and conditions as to the liability of the Commission for loss or damage.[119] The Tribunal is empowered to adjudicate on schemes of charges submitted to it by the Commission after hearing objections at a public inquiry from representative bodies of users of the services or providers of comparable services. The decision of the Tribunal takes the form of a confirmation of the scheme examined with or without modifications or of a refusal to confirm it. The Tribunal has in addition power to alter a charges scheme on the application of the Commission or representative bodies of persons concerned as well as to review the operation of a charges scheme at the instigation of the Minister of Transport. Overriding provisions prevent the Commission and the Minister from taking any action in respect of charges schemes in such a way as to prevent the Commission from discharging its general duty to balance outgoings against revenue or from giving effect to ministerial directions duly given under the Act of 1947.

As regards constitution and procedure, the Transport Tribunal inherits the powers conferred on the Railway Rates Tribunal which it displaces. Those powers are contained in The Railways Act, 1921, which has been slightly modified to meet the new position. The Transport Tribunal consists of three permanent members to which the Minister of Transport may add two additional members chosen from panels of persons possessing knowledge of (a) general trading, labor, and agricultural interests, and (b) transport interests. In the exercise of its functions, the Tribunal

[114] Coal Industry Nationalisation Act, 1946, §49; Transport Act, 1947, §11; Electricity Act, 1947, §12; Gas Act, 1948, §14; Iron and Steel Act, 1949, §10.
[115] Report dated June 30, 1949. CMD. No. 7740.
[116] Under the Transport Act, 1947, pt. V.
[117] 11 & 12 GEO. 5, c. 55. [118] 51 & 52 VICT., c. 25. [119] Transport Act, 1947, §76.

has the general powers of the High Court in England (and the Court of Session in Scotland), including such powers as relate to the attendance and examination of witnesses, the production and inspection of documents, the enforcement of orders, and the entry on and inspection of property.[120] Appeals from the Tribunal on questions of law lie to the Court of Appeal in England (and to the Court of Session in Scotland). The Tribunal is under obligation to make an annual report of proceedings to the Minister of Transport.

Under transitional provisions[121] the Minister of Transport has power to make regulations authorizing the Commission to levy additional charges with a view to securing sufficient revenues but before so doing he is under obligation to consult with and consider the advice of the permanent members of the Tribunal acting as a consultative committee. Such consultation was effected in connection with a recent application by the Commission for an increase of $16\frac{2}{3}$ per cent in railway and canal charges and certain increases in dock charges. After a public inquiry extending over several days when representatives from various bodies interested were heard, the committee advised that the additional charges should be made.[122]

A draft scheme under the title of the London Area (Interim) Passenger Charges Scheme was submitted to the Transport Tribunal under section 76 of the Transport Act, 1947, and, after holding a public inquiry thereon, the Tribunal issued its judgment on August 23, 1950.[123] The main objectives of the scheme were to secure greater equality of fares for different journeys of similar length and for journeys between common points by alternative routes, and in particular to remove the disparities between the charges of the Railway Executive (responsible for the main line suburban railways) and those of the London Transport Executive (responsible for the coordinated system of transport by rail, bus, trolley-bus, and tram originally set up for the London Passenger Transport Area), the former charges being usually higher than the latter. Further objectives were to encourage the most convenient use by the public as a whole of the passenger transport facilities in London and to rationalize the anomalous system of early-morning workmen's fares which were available for some passengers but not others. The scheme was estimated to yield £3,691,000 or 4.87 per cent more gross receipts than the charges in force and included an increased charge for workmen's tickets on railways, trolley-buses, and trams and an extension of the system to ordinary buses, a new day return fare for suburban lines on British Railways, a standard charge for season tickets on London Transport lines and suburban lines of British Railways, an increase in the scale of bus fares, and a reduction in the mileage rate for London Transport coach fares. The Tribunal considered that the scheme would yield in a normal year approxi-

[120] *Id.*, Tenth Schedule; Transport Tribunal Rules, 1949 (S. I. No. 989).
[121] Transport Act, 1947, §82.
[122] See reports dated Feb. 6 and 16, 1950.
[123] Report issued by H. M. Stat. O. (88-83-1*).

mately £1 million more than the contribution which the London Area ought to be called on to make to the total financial requirements of the British Transport Commission and accordingly requested the Commission to effect a reduction. This the Commission did mainly by amendments of the early-morning return railway fares and the retention of cheap fares for shift workers on railways, trams, and trolley-buses. The scheme as settled was estimated to yield £2,680,000 or 3.53 per cent more gross receipts than the charges in force.

E. Arbitration Tribunals

In order to deal with the various questions arising in connection with the transfer of assets, rights, and liabilities from private owners or local authority undertakers to the public corporations, special arbitration tribunals are established by the various creating statutes except as regards coal, where the questions are determined by an arbitrator chosen from a panel of arbitrators appointed by the Lord Chancellor.[124] Thus in the case of electricity,[125] the arbitration tribunal consists of three members appointed by the Lord Chancellor, one with legal experience to act as president and two others with experience in business and finance.[126] The tribunal is a court of record and its orders are enforceable in England and Wales as orders of the High Court. It has power to administer oaths, correct mistakes in awards, examine witnesses, and impose costs in accordance with the provisions of the Arbitration Act, 1950. Appeals lie from the tribunal on questions of law (and on certain limited questions of fact) to the Court of Appeal. The minister concerned has the right to be heard in all proceedings before the tribunal and appeals therefrom. The tribunal makes its own rules of procedure subject to the approval of the Lord Chancellor. The remuneration of the members of the tribunal and its officers is paid by the minister who is reimbursed by the British Electricity Authority. The matters dealt with by the tribunal relate to such matters as the compensation to be paid to holders of transferred securities if the minister and the stockholders' representative fail to agree on the matter, the disclaimer by the corporation of agreements and leases made unreasonably or imprudently by the owners of the undertakings transferred, the dissipation of assets by companies prior to transfer, or the payment of excessive dividends or interest by directors of companies prior to transfer. Similar provisions are enacted in the case of gas, transport, and iron and steel.[127] Since these tribunals are mainly concerned with the settlement of the problems and disputes arising out of the transfer of assets from private to public ownership, their importance diminishes with the passage of time and they do not affect the permanent structure of the corporation.

[124] Coal Industry Nationalisation Act, 1946, §61.

[125] Electricity Act, 1947, §§31-33.

[126] As regards Scottish procedure, the legal member is appointed by the Lord President of the Court of Session.

[127] Gas Act, 1948, §§63-66; Transport Act, 1947, §§105-107; Iron and Steel Act, 1949, §§43-46.

F. Ultra Vires Control

Public corporations created by statute are entitled to exercise the powers mentioned in the statute and these powers are usually expressed in comprehensive terms which confer upon the corporations ample scope for the exercise of their activities. This follows the analogy of modern memoranda of association of companies which allow a wide range of operation for the companies. In some cases, the statute limits the powers of the corporation by special restrictions, *e.g.*, a prohibition on certain forms of manufacture which the government has decided to leave within the sphere of private enterprise. Where there are ancillary corporations (as in the case of the Transport Executives), the powers of the corporations are not set out completely in the creating statute but need to be extracted partly from instruments of delegation made by the dominant central corporation.

If a public corporation acts in excess of its powers, or if it misuses the powers entrusted to it, a person aggrieved can approach the courts for a judicial decision on the matter, and the courts can pronounce the act to be ultra vires of the corporation and therefore entitling the complainant to a legal remedy. Where the person aggrieved is himself resisting legal action by the corporation, he can raise a similar issue in defence of his case before the courts.[128] The remedy sought is usually a declaration by the court that the corporation's act is ultra vires or an injunction restraining the corporation from further exercise of the power in dispute. In determining the scope of the corporation's powers, the court will have regard to the express terms of the creating statute (and any necessary instrument made thereunder) and to anything which is necessarily and properly required for carrying into effect the purposes of incorporation or which may be fairly regarded as incidental to or consequential upon what the legislature has authorized.[129]

Where the corporation is acting under its general statutory powers, cases of ultra vires will probably be of infrequent occurrence in view of the wide range of those powers, especially where they extend (as in the case of the National Coal Board or the Electricity Boards)[130] to such activities as are requisite, advantageous or convenient for the discharge of its express duties or are incidental or conducive thereto. Where the corporation is subject to special restrictions (*e.g.*, as to powers of manufacture), private traders will no doubt be alert to challenge acts of the corporation which exceed those restrictions. The corporation can, however, forestall any such challenge by securing further statutory powers when contemplating new operations. Thus the National Coal Board has been empowered by section 2 of the Coal Industry Act, 1949, to extend the area of its activities outside Great Britain subject to orders made by the Minister of Fuel and Power, and under the National Coal Board (Overseas Activities) Order, 1949, as amended in 1950,[131] the Board has

[128] See Friedmann, *supra* note 103, at 244 and 379.
[129] 8 HALSBURY'S LAWS OF ENGLAND 72 (2d ed. 1931).
[130] Coal Industry Nationalisation Act, 1946, §1; Electricity Act, 1947, §2(5).
[131] S. I. 1949, No. 2292; S.I. 1950, Nos. 1681 and 1911.

extended powers of selling carbonization products abroad, maintaining representatives abroad to promote the sale of coal, acquiring machinery abroad for use in Great Britain, and acquiring coal abroad and supplying it to any country.

The case of *Smith v. London Transport Executive* heard before the Court of Appeal[132] raised the question of the scope of the powers to run omnibus services delegated to the London Transport Executive by the British Transport Commission. The appellant claimed an injunction restraining the Executive from running a competing line of omnibuses over a route extending 400 yards outside the London Passenger Transport Area without obtaining a road service license, or a declaration that such action by the Executive was ultra vires. The Court, after careful examination of the powers of the Commission under the Transport Act, 1947, and the powers delegated to the Executive by the instrument of delegation, found in favor of the Executive on the ground that the instrument of delegation empowered the Executive to carry on not only the activities of the former London Passenger Transport Board undertaking which had been transferred to the Commission but also the general activities of the Commission[133] (*viz.*, to carry passengers by road within Great Britain) so far as they were carried on in connection with the London Board activities or were ancillary thereto. In such cases the Executive was relieved[134] of the obligation of obtaining a road service license. Had such an obligation been in force, the appellant would have had an opportunity of opposing the grant of the license by the licensing authority.

Examples of special restrictions are as follows. The Central Electricity Authority is not entitled to manufacture electrical plant or electrical fittings for export and an Area Electricity Board is not entitled to manufacture electrical plant or fittings or to sell, hire or supply electrical plant (as distinct from fittings).[135] A Gas Area Board is not entitled to manufacture gas plant or gas fittings for export.[136] The British Transport Commission is not authorized to engage in the building of ships over a gross tonnage of 175 tons or to manufacture things for other undertakers or to trade in spare parts for road vehicles.[137]

In another transport case[138] decided by Mr. J. P. Eddy, K. C., the stipendiary magistrate of West Ham, the question arose as to the powers of the Railway Executive as agent of the British Transport Commission to administer bylaws made by a former railway company, whose undertaking had been transferred to the Commission by the Transport Act, 1947. The point was raised in defence by a market employee prosecuted for obstruction with a barrow at a railway station under bylaws made by the London and North Eastern Railway Company. The magistrate's ruling

[132] [1949] 2 All E.R. 295 (C.A.).
[133] *I.e.*, under §2(1) of the Transport Act, 1947.
[134] By §65(1) of the Transport Act, 1947.
[135] Electricity Act, 1947, §2.
[136] Gas Act, 1948, §1.
[137] Transport Act, 1947, §2.
[138] Reported in Daily Telegraph, Oct. 3, 1950.

was that under Section 14(2) of the Act of 1947 the Commission (and the Executive as agent of the Commission) had, on the transfer of the railway undertaking, all the rights which the railway company had including rights conferred by bylaws made by the railway company.

Another case, *National Coal Board v. Hornby and Others*,[139] heard in the Chancery Division of the High Court, raised the question whether the option to purchase a farm granted to a colliery concern by the owner was exercisable by the National Coal Board on the transfer of the assets of the colliery concern to the Board under the Coal Industry Nationalisation Act, 1946. The Court held in favor of the Board on the ground that the assets (including the option) of the colliery concern passed to the Board under Section 5(1) of the Act of 1946 as land available for coal industry activities within the meaning of Paragraph 9 of Part I of the first Schedule to the Act, and the Board was entitled to exercise the option under the original deed. The fact that the Board, under an alternative provision contained in Section 7 and the second Schedule of the Act, could have acquired the farm on giving notice of acquisition to the owner but had failed to serve the requisite notice did not prevent the Board from relying entirely on the former provision. The Court therefore decreed specific performance of the contract of purchase which, under the terms of the deed, arose on the service of notice to exercise the option to purchase.

[139] [1949] 2 All E.R. 615 (Ch. D.).

SOME ECONOMIC ASPECTS OF NATIONALIZATION

ANDREW M. DE NEUMAN*

I

THE BACKGROUND

A. The Extent of Nationalization

Nationalization did not spring out suddenly like Minerva from Jupiter's head. It had already made its appearance in Great Britain before the 1939 war, but then it was used only when the less powerful tools of state interference such as tariffs and subsidies failed to guide industry along the lines the government wanted it to follow. After the last war, the coming to power of the Labor Government changed the situation.

Since 1945, under the Labor Government, nationalization (in nearly all cases against compensation of the former owners) has engulfed various important sectors of the British economy. It has penetrated into the complicated field of "betterments"[1] in relation to land and vested in the state all development values (without actually nationalizing the ownership of land); it has swept through a large array of basic industries; it has also brought about the relatively non-controversial state ownership of the central bank and, probably more transient in character, of purchasing and selling raw cotton.[2]

Under the new regime, statutes (see Table 1) have nationalized the Bank of England, cable and wireless tele-communications, the exploitation of coal (with the exception of open-cast coal); electricity is generated and distributed by the British Electricity Authority and fourteen Area Boards, and gas by twelve Area Boards under the guidance of a central Gas Council. The bulk of inland transport is the concern of the British Transport Commission and its Executives; civil aviation[3] and the bulk of the iron and steel industry are also run by public corpora-

* Former Lecturer in Economics, University College of the South West of England, Exeter. Author, ECONOMIC ORGANIZATION OF THE BRITISH COAL INDUSTRY, and of other works.

[1] The nationalization of "betterment" values of town and country lands has fulfilled a pledge given by the Labor Party during the election campaign of 1945. It was implemented by the Town and Country Planning Act, 1947, 10 & 11 GEO. 6, c. 53, and constitutes the most controversial part of this very extensive statute. The essence of the reform is that while the ownership of land remains in the hands of the proprietor he is deprived of the benefit of any appreciation of its value due to its better use or "development." Under the Act, if an owner of land undertakes major developments which cause an increase in the value of land he is obliged to pay a development charge. A Central Land Board has been set up to assess and collect these development charges on the difference in the value of land resulting from a change in its use (for instance turning a cabbage field into an industrial estate); see Part VII of the Act.

[2] The importation and marketing of raw cotton in Great Britain are the monopoly of the Raw Cotton Commission of Liverpool.

[3] The British Overseas Airways Corporation was established as a public corporation just before the 1939 war by the government of Mr. Neville Chamberlain. It is one of those strange British paradoxes that this organization more than any other served as a model for the Socialist nationalizers.

TABLE 1

Corporations, Executives of Corporations, and Consumers' Councils, Which Are Required to Be Set Up in Great Britain as a Result of Nationalization Acts. As of November 25, 1950.

Act	Date of the Act	Public Corporation		Subordinate Executive		Consumers' Representatives	
		Name of the Corporation	Date Members Officially Appointed	Names of the Executives	Date Members Officially Appointed	Name	Date Members Officially Appointed
British Overseas Airways Act, 1939; 2 & 3 GEO. 6, c. 61; see also Civil Aviation Act, 1946.	Aug. 1939	British Overseas Airways Corporation	Nov. 1940	None	.....	None (but see Civil Aviation Act, 1946)	
Hydro-Electric Development (Scotland) Act, 1943, 6 & 7 GEO. 6, c. 32.	Aug. 5, 1943	North of Scotland Hydro-Electric Board	During Sept. 1943	None	.....	None (but see Electricity Act, 1947)	
Bank of England Act, 1946, 9 & 10 GEO. 6, c. 27.	Feb. 14, 1946	Bank of England	Mar. 1, 1946	None	.....	None	
Coal Industry Nationalisation Act, 1946, 9 & 10 GEO. 6, c. 59, and Coal Industry Act, 1949, 12 & 13 GEO. 6, c. 53.	July 12, 1946 July 30, 1949	National Coal Board	July 15, 1946	None	.....	An Industrial Coal Consumers' Council A Domestic Coal Consumers' Council	July 14, 1947 July, 1947
Civil Aviation Act, 1946, 9 & 10 GEO. 6, c. 70; and Air Corporations Act, 1949, 12, 13 & 14 GEO. 6, c. 91.	Aug. 1, 1946 Dec. 16, 1949	British South American* Airways Corporation British European Airways Corporation	Aug. 1, 1946 Aug. 1, 1946	None None	....	Air Transport Advisory Council	By June 11, 1947
Cable and Wireless Act, 1946 9 & 10 GEO. 6, c. 82.	Nov. 6, 1946	Cable and Wireless	Jan. 1, 1947	None	.....	None	
Cotton (Centralised Buying) Act, 1947, 10 & 11 GEO. 6, c. 26.	May 21, 1947	Raw Cotton Commission	Nov. 26, 1947	None	.....	None	
Transport Act, 1947, 10 & 11 GEO. 6, c. 49.	Aug. 6, 1947	British Transport Commission	Sept. 8, 1947	Railways Executive Road Transport Executive** London Transport Executive Docks and Inland Waterways Executive Hotels Executive	Nov. 21, 1947 Mar. 8, 1948 Dec. 2, 1947 Dec. 23, 1947 May 13, 1948	A Central Transport Consultative Committee for Great Britain A Welsh Transport Users' Consultative Committee A Scottish Transport Users' Consultative Committee Other Users' Consultative Committees. The London Transport Consultative Committee is the only one appointed so far	Dec. 19, 1948 July 27, 1949 July 27, 1949 Feb. 22, 1950
Electricity Act, 1947, 10 & 11 GEO. 6, c. 54.	Aug. 13, 1947	British Electricity Authority	Aug. 15, 1947	14 Area Boards	By Jan. 1, 1948	An Electricity Consultative Council for the area of each Board (Committees or individuals to be appointed as local representatives of these Councils) The same for the North Scotland area.	Between Dec. 7, 1948 and Feb. 7, 1949
Overseas Resources Development Act, 1948, 11 & 12 GEO. 6, c. 15.	Feb. 11, 1948	Colonial Development Corporation Overseas Food Corporation***	Nov. 1947 Feb. 16, 1948	None None	....	None None	
Gas Act, 1948, 11 & 12 GEO. 6, c. 67.	July 30, 1948	Gas Council	Nov. 25, 1948	12 Area Boards	By Dec. 12, 1948	A Gas Consultative Council for the area of each Area Gas Board. (Committees or persons to be appointed as local representatives of these Councils)	Between July 15, 1949 and Aug. 1, 1949
Iron and Steel Act, 1949, 12 & 13 GEO. 6, c. 72.	Nov. 24, 1949	Iron and Steel Corporation of Great Britain	Oct. 2, 1950	None	.....	An Iron and Steel Consumers' Council	Not yet appointed

*Absorbed since by the B.E.A.C. **The Road Transport Executive was divided into the Road Haulage Executive (the old Road Transport Executive) and the Road Passenger Executive, by an Order of the Minister of Transport, dated June 18, 1949, to take effect from June 20, 1949. The Road Passenger Executive was officially appointed on July 5, 1949. ***Completely reorganised in 1951.

tions. With beet-sugar production on the way to being taken over, a very large slice of Britain's economy is nationalized.

B. Facts and Figures Relating to Public Corporations

Before we discuss the economic aspects of nationalization it might be helpful to give a few sketches to guide the reader through the maze of public corporations.

1. *Who runs them.* The nationalization acts have led to the formation of a bewildering array of corporations, executives, and consumers' councils. Table 1 shows the bodies which are required by statute to be set up. All the recently established public corporations derive their authority from specific acts of Parliament. In every case the nationalization act has clearly defined the body or bodies which are responsible for running the industry. Sometimes subsidiary bodies are also provided for by statute; in other cases the creation of executive organs has been left to the discretion of the corporation. The Table brings out clearly that the creation of subsidiary bodies by law is the exception rather than the rule. Only in transport and electricity is a two tier structure a statutory requirement.[4] In practice, of course, whatever the statutory requirements, most corporations have found it necessary to set up numerous lower formations on a functional or geographical basis. Many of these are discussed in the text. No attempt is made to show them in the Table.

It is perhaps significant that although it has not always been thought necessary to provide by law for the setting up of subsidiary executive formations, in nearly every case the statutes make provision for the formal representation of the consumers' interests. Presumably it was realized that the corporations could not be left to set up such machinery for themselves.[5] Where no provision is made for consumer representation it can fairly be said that representation would be superfluous. Thus the Bank of England and Cable and Wireless Ltd. have little occasion to elicit the views of their customers by formal means. The Raw Cotton Commission serves a comparatively small group of businesses who have adequate means of making their views known. For the Overseas Food Corporation and the Colonial Development Corporation formal machinery for consumers' representation would obviously be very difficult to organize. Neither the British Overseas Airways Act, 1939, nor the Hydro-Electric Development (Scotland) Act, 1943, provided for consumers' representation, but these omissions were made good by subsequent legislation (the Civil Aviation Act, 1946, and the Electricity Act, 1947, respectively). Strange as it may

[4] In the gas industry the method of administration is quite exceptional. The primary units are the Area Gas Boards; the Gas Council is merely the apex of a federal structure.

[5] Although the British Broadcasting Corporation is not under discussion here, it is interesting to note that this corporation has gone to great lengths to establish means to learn the preferences of its consumers. This is closely related to market research. It runs an elaborate Listener Research organization which canvasses listeners' views both by questionnaires and interviews. It has advisory panels for the major branches of broadcasting—schools, religion, etc.—and it appears to be willing to use any other device for obtaining opinions of its "customers" on programs, though not of course on costs, etc. The North Thames Gas Board operates a consumers' market research.

seem, by July, 1951, the machinery for consumers' representation was still not fully set up and not all the councils have been appointed.

TABLE 2

THE MAIN ACTIVITIES OF PUBLIC CORPORATIONS

Corporations and Executives	Activities Carried Out
British Electricity Authority	Generation, purchase, and transmission of electricity Sale of electricity to Area Boards and railways
Area Electricity Boards	Purchase and sale of electricity Distribution of electricity Renting of meters, apparatus etc. Hiring, selling, repairing, and maintaining electrical fittings
Gas Council	The manufacture of plant required by Area Gas Boards. Selling, supplying, installing, repairing, maintaining, and removing such plant Manufacturing, selling, and supplying gas and coke fittings (except for export)
Area Gas Boards	Acquiring gas in bulk from other Area Boards and other persons Manufacturing and distributing gas in their areas Manufacturing and selling coke, other solid fuels, and by-products obtained by carbonization Making available and installing gas and coke fittings for sale or hire
British Overseas Airways Corporation, and British European Airways Corporation	Providing scheduled air services for passengers, mail, diplomatic bags, and commercial freight Engineering, aircraft, route and flying conditions research (N.B., they cannot manufacture air-frames, aero-engines, or airscrews) Providing charter services
National Coal Board	Mining coal Distribution of coal wholesale and retail, at home or overseas Producing coke, gas, manufactured fuel, brickettes, bricks, and tiles Refining benzole Distilling tar Repairing railway wagons Managing housing estates Operating farms Licensing mines to private operators

	Transmitting and distributing electricity Selling electricity to ordinary consumers and to the British Electricity Authority
North of Scotland Hydro-Electric Board	Promoting the construction of hydro-electric schemes and a Highland grid. Operating diesel generating stations and gas turbine generating plant Selling and hiring electrical apparatus Wiring consumers
British Transport Commission	*Carrying Activities* (a) British Railways: Passenger and freight services by rail and ship Collection and delivery of goods (b) British Road Services: Road haulage (c) Provincial and Scottish Group: Road passenger services (d) London Transport: Road and rail passenger services *Non-Carrying Activities* Docks, harbor, and wharfs Inland waterways Hotels and refreshment rooms Commercial advertising Letting sites, shops, etc. on premises and property used by the Commission

2. *What they do.* Table 2 sets out the principal activities in which the British public corporations engage. The list is by no means complete. None of the younger corporations have been established to develop an entirely new line of economic activity; they have all been formed to take over and control businesses which had already been in existence for a number of years. They thus found themselves in control of a range of ancillary products and services which had been developed by private owners.

There are four main reasons why private firms engulfed by nationalization had developed such activities. It was often profitable to enter into lines of business nearer the ultimate consumer. This was particularly true of coal mining where forward-integration into coke production might secure a market in times of bad trade. Secondly, there was integration backwards which was even more attractive. By building their own locomotives and rolling stock the railways could foster technical developments and keep a check on the prices charged by outside suppliers. Thirdly, the need to develop outlets for by-products was a potent reason for branching out into new lines. Gas undertakings developed plants for producing sulphate of ammonia, pitch, and creosote. Colliery companies operated brickworks to utilize

TABLE 3

PUBLIC CORPORATIONS: PARENT MINISTERS AND EMPLOYEES

Parent Minister	Corporation	Approximate Number of Employees employed as of September 1949	Approximate Number of Employees of Public Corporations under each Minister	Gross Revenue per head per Employee £
Minister of Fuel and Power	National Coal Board	800,000	1,086,000	598
	British Electricity Authority	156,000		1,367
	Gas Council	130,000		
Postmaster General	British Broadcasting Corporation	12,000	22,000	1,288
	Cable and Wireless	10,000		
Minister of Food	Overseas Food** Corporation	30,000	30,000	
Minister of Supply	Iron and Steel Corporation of Great Britain	None***		
Colonial Secretary	Colonial Development Corporation	Figure not available		
Minister of Transport	British Transport Commission	900,000	900,000	577
President of the Board of Trade	Raw Cotton Commission	1,000	1,000	114,000
Minister of Civil Aviation	British Overseas Airways Corporation	19,000	25,000	1,132
	British European Airways Corporation	6,000		1,267
Secretary of State for Scotland	North of Scotland Hydro-Electric Board	14,000	14,000	250
			2,097,000	
None	Bank of England	6,000		
	Total		2,103,000	
Approximate number of persons employed overseas, during September 1949		36,000		
	Total at home		2,067,000	
Estimated number of persons in civil employment during September 1949*		22,230,000		
The percentage of the persons in civil employment during September 1949 employed by public corporations		9 per cent****		

*MONTHLY DIGEST OF STATISTICS No. 57 (CENTRAL STATISTICAL OFFICE, LONDON) 4 (Sept. 1950).

**Early in 1951 the situation here changed completely.

***On May 5, 1951 the Iron and Steel Corporation of Great Britain employed 229,000 workers, see Monthly Statistical Bulletin of the British Iron and Steel Federation, June, 1951, p. 26.

****This figure does not include the employees of the Iron and Steel Corporation of Great Britain which came into being in 1951.

the clay which would otherwise have accumulated in embarrassing quantities on the surface. Electricity undertakings sought profitable markets for surplus steam and the railways and buses became major providers of advertising space. Railways ran hotels at their terminal stations and elsewhere. Finally there was a tendency to avoid competition by buying up rivals. The bad state of British canals is largely due to their handling by the railways which bought them. The railways acquired considerable interests too in the road and passenger haulage fields.

As a result the public corporations are engaged in an extensive range of subsidiary activities. To some extent nationalization has provided an occasion for breaking up the different economic interests and sorting them out administratively by classes of activity. Thus inland waterways have been placed under the control of a separate Executive of the British Transport Commission and the National Coal Board has acquired all large coal mines, including those formerly owned by steel companies. Nevertheless the range of activities covered by the National Coal Board in particular is wide and these ancillary interests are a potential cause of conflict between the corporations and a worry to the Board.[7] The balancing of their accounts overall is accidental, while the range of activities is so heterogeneous.

3. *Their Manpower.* The public corporations have a great responsibility to a large section of the working population and to the community as a whole. They employ about 10 per cent of the nation's total civilian labor force and a very much larger proportion of manual workers. Upon their success or failure as employers depends the profitable use or misuse of a considerable productive force, and the contentment or discontentment of thousands of workers.

It is extremely difficult to judge accurately the corporations' success as employers; indeed to be able to do so, one would have to be a psychologist as well as an economist. For example the impact of official strikes[8] in the nationalized industries cannot be compared simply with pre-nationalization conditions for there is at least one new factor at work—the trade unions' support of the government which reinforces the anti-strike policy. Although the men and women working for public corporations can be affected by decisions taken by the corporations' parent ministers they are not government employees or civil servants (see Table 3).

Some public corporations, *e.g.*, the British Overseas Airways Corporation, the British European Airways Corporation, and British Railways, are at present reducing the amount of their manpower as an act of policy. Others are losing men despite frantic efforts to keep them or to recruit new ones. One of the criteria of success of coal nationalization in the short run is the ability to retain and to recruit the necessary number of miners. Most corporations however seem to increase their office staffs at one stage or another.

[7] The National Coal Board has disposed of its mainline wagons to the British Transport Commission but in the distribution of electricity and the production of gas it may yet prove a thorn in the flesh of the British Electricity Authority and the Area Gas Boards.

[8] Official strikes are strikes authorized by trade unions. As unions have tended to refuse authorizations to strike, a more accurate estimate of labor discontent can be gained from the unofficial strike figures.

4. *Their Profits and Losses.* The losses of the British Overseas Airways Corporation and British European Airways Corporation have caused little surprise. It is not anticipated that these corporations will make a profit as long as prestige flying is in fashion. Indeed, the Civil Aviation Act, 1946, provides for subsidies to be paid until 1956.

The British Transport Commission's deficits were also anticipated, mainly because the railways had been losing money. In most corporations which recorded credit balances, profits so far registered have not been large. Their size was not so much due to their inability to increase charges, as to the government's anti-inflation policy. If costs continue to rise and the Trades Union Congress no longer effectively supports the government's "wage freeze" policy, it would be too much to expect that all these increases could be countered by savings resulting from economies (see Table 4).

TABLE 4

APPROXIMATE GROSS INCOMES, PROFITS, AND LOSSES OF PUBLIC CORPORATIONS FOR THE YEAR 1949.

Corporation	Approximate Gross Incomes for 1949	Approximate Losses for 1949	Approximate Profits for 1949
	£	£	£
British Broadcasting Corporation	15,458,000	.....	1,035,000
North of Scotland Hydro-Electric Board	3,485,000	.....	97,000
National Coal Board	478,360,000	.....	9,467,000
British Overseas Airways Corporation	21,515,000*	9,213,000	
British European Airways Corporation	7,603,000†	1,311,000	
Raw Cotton Commission	113,869,000	7,357,000‡	
British Transport Commission	518,899,000	20,761,000	
British Electricity Authority§	213,141,000	.....	4,392,000‡
Total £	1,372,332,000		
Gross National Income for 1949	11,076,000,000		
Approximate total of the 1949 Gross Receipts of the Public Corporations as a percentage of the 1949 National Income	12½[1]		

*This figure does not include the £6,350,000 Exchequer Grant received by the Corporation for this period.
†This figure does not include the £1,535,000 Exchequer Grant received by the Corporation for this period.
‡This figure was reduced to £707,000 by appropriation from Reserve Fund. In the year ended July 31, 1950 (second full year) the Raw Cotton Commission made £10 million profit before taxation and other appropriations.
§The British Electricity Authority made a surplus of £7,163,000 in the year ended March 31, 1950.
‡Year ended March 31.
[1]The inclusion of Gas and Iron and Steel would raise this figure to the region of about ⅛ of the National Income.

Electricity is a great expanding industry and one earning profits. Between the operational years 1947/48 and 1949/50 the number of units generated rose from 41.3 million to 48.6 million. Maximum output capacity of plant rose by about 9 per cent in two years.[9]

[9] REPORT OF THE BRITISH ELECTRICITY AUTHORITY FOR THE YEAR ENDED MARCH 31, 1950 App. 23.

C. Neglect of Theoretical Discussion

For the purposes of this essay I accept nationalization as a fact and propose to discuss a number of economic problems facing the public corporations. It is not my intention to discuss the perennial question whether nationalization is the road to serfdom or the road to a new freedom. Nor do I wish to moralize. It is easy to discourse on the virtues or the vices of nationalization, and according to one's stand to demonstrate that either it has bloody hands or that it is simon-pure and snow-white.

Unfortunately most literature about the British nationalized industries has been polemical. There is little that is constructive and well informed. Polemics do not help to reverse the verdict, of what, at least at present, is a democratic and constitutional wish of the majority nor do they contribute much towards the understanding, critical appraisal, or undertaking of remedial action where the economic planning, efficiency, or administration of the nationalized industries have gone wrong. Thus the public knows very little of the economic problems and difficulties facing the public corporations in Britain or the errors already committed by their boards and on the other hand, the boards of public corporations labor under a sense of isolation and are without guidance from enlightened public opinion. There are innumberable writers passionately opposing[10] or supporting nationalization, whose arguments are based on a purely emotional aprioristic approach to the subject. If pressed to define the changes that nationalization has brought about, they would be unable to put their finger on the essential features.[11]

Few academic economists were at the time of the Socialist victory in Britain in a position to offer guidance on practical pricing, costing, and planning of big units. The administrator, instead of being given advice by the academic economist, is served with voluminous non-factual writings on "ought-to-be's." He is thus bound to endorse the words of Mr. Chester, who writes not without sarcasm that "so much has been written by economists about the theoretical considerations which should govern the price policy to be followed by the managements of the various nationalized industries that it will at least be a change to look at the actual legislation and see what is contemplated in practice."[12]

[10] Here is a typical example of an attitude towards nationalization: "Nationalization—that cretin conceived by long-haired Bloomsbury out of envy and greed with timid capitalism as its midwife—is standing in the market place with its foolish tongue hanging out and wagging its monstrous head for all to jeer at. It has not only let down the consumer but it has failed where it cannot afford to fail, and that is in its labor relations. Most of the strikes today are in the nationalized or Government-controlled industries. Now is the time for industry to pluck up its courage and knock out this alien monster." Mr. L. D. Gammans, M. P., *Does Industry Lack Courage?*, The Financial Times, Nov. 15, 1950, p. 4.

[11] It is probable that those who saw in nationalization the embodiment of their party's creed were actuated by such fervor that they never paused to think that nationalization (of which in Britain the only common feature is the paying-off of the private owners) could take a large number of forms, some of them not at all to their liking. When victory of the Labor cause was suddenly assured, they stood in awe, unready to implement their ideals and without a clear plan of action. Mr. Shinwell admitted this in his Edinburgh speech of May 2, 1948; see also 478 H. C. DEB. 2824 (5th Ser. 1950). The opponents of nationalization, on the other hand, piled scorn upon contempt on it and failed to see that nationalization worked differently when applied to various industries.

[12] D. N. Chester, *Notes on the Price Policy Indicated by the Nationalization Acts*, 2 OXFORD ECONOMIC PAPERS 69 (Jan. 1950).

D. The Real Problem

It is not in the economic, but in administrative, accounting, and professional journals that fragments of real problems are scattered here and there. The British press, always watchful and alert, has certainly given much attention to the nationalized sector of industry. This interest is very valuable. But facts which make good news in the press are often not those which influence crucial developments,[13] or which help the formulation of problems.

The voice of the consumer was not properly heard. Nearly all the nationalization statutes provide for the representation of the consumers. In most cases, the machinery was not called into being until the formative stages of the boards were completed. Thus consumers too could not, and still do not, influence the style of economic thinking and administration of the public corporations.

The supervising ministers and their advisers were torn between two desires. They wanted the nationalized industries to be commercially and administratively independent, but on the other hand wished to keep themselves informed of various details and to direct by informal advice and "boudoir politique" rather than by open directions so as to reduce the amount of external criticism and to ensure success at whatever the cost to the economy.

As the number of nationalized boards increased, there must have been a strong tendency for them to seek to regulate their mutual relations, attitudes to staffs, etc., and to settle their differences privately whenever their economic interests clashed, *e.g.*, the British Electricity Authority always wants better and cheaper coal and the National Coal Board wishes to generate its own electricity and to make small coal more remunerative. The British Transport Commission wants cheap and good coal, while coal needs cheap transport. Mutual arrangements had to be made as nationalization advanced (*e.g.*, private railway wagons were compulsorily bought by the National Coal Board from the owners, but when the British Transport Commission was formed, Transport expropriated the rolling stock of the National Coal Board; when the Ulster Transport Authority was formed it bought out some assets from the British Transport Commission). Matters requiring payments are publicly known, others applying to methods and functions are less easy to ascertain. The ministers and their servants may not be as well informed of what is going on in the boards as they would like to be or indeed the public may think they are, while at the same time the ministers have the task of shielding the corporations from the in-

[13] Thus, for instance, Mr. J. Latham, the able Director-General of the National Coal Board's Finance Department, complained not without justification: "Before the accounts were published, considerable apprehension had been expressed as to the standard of disclosure which might be adopted," but when the accounts were published there was, however, "little informed discussion or criticism of the accounts in the professional press." And he goes on a little later, saying "I am not aware of any important information which would be of real value to economists which is not disclosed, for example, by the National Coal Board. This is perhaps a rash statement which I may regret, but if it leads to indications of the nature of the information which accountants, particularly those in nationalized industries, have in their possession and are not disclosing, I shall be satisfied." In *The Accounts of Nationalised Industries*, The Accountant, June 11, 1949, pp. 487, 489, 490.

quisitive public and of approving their investments. In such conditions haphazard and arbitrary behavior has an ideal climate in which to thrive.

In the circumstances the design and progress of nationalization was left to the administrators.[14] No doubt the boards, with such various resources of means and talents as they have been able to muster, have been trying in their own way to make a success of the job, although much could be said about their consistency and choice of criteria of success, and the all pervading tendency to foster monopoly by eliminating competition.

E. Control and Supervision

In the absence of enlightened leadership from those qualified to analyze and to ask questions it is not surprising that the standard of discussion on the nationalized industries is by no means elevating. It is astonishing, says the journal *Public Opinion*,[16] how many people discuss nationalization without reference to the problems of the nationalized industries. Yet such problems demand urgent consideration. Many things need to be made clear. To what extent are the boards real policy makers and economic planners?[17] Or is the final decision always to come from the ministers?

Parliamentary debates on public corporations are infrequent and when taking place, do not always probe into essentials. Techniques of approaching the problems have not been evolved as yet. The debates are nearly always disjoined, everyone tackling a different point,[18] or applying standards of comparison of pre-nationalization days.

Dissatisfied with the existing machinery of supervision and present economic accountability, many politicians and pamphleteers are searching after a new machinery of accountability, asking for an inter-party Committee of Parliament on public corporations or similar investigating bodies. But even the best Committee, if not given the criteria by which to judge the results and without the access to facts, can only be of very limited use. Without detailed knowledge of the background and of basic facts, debaters can only beat the air and plough the sand.[19]

[14] Even now there is little literature dealing with the economic problems which confront the managers of public corporations. This is also partly the reason why the so profusely mentioned national plans of our publicly owned industries are still in major parts unready or not fully opened to public inspection; such releases, when made, are rather vague.

[16] Oct. 16, 1950.

[17] Certain decisions are reserved to the ministers concerned because (a) the nationalization acts say so; (b) the decision rests with the minister for some other reason, *e.g.*, the board wants him to use his powers, *e.g.*, to train recruits or requisition land; or (c) the minister has powers under some other act, *e.g.*, to prevent river pollution.

[18] Some members of Parliament on both sides of the House are aware of this failing. Mr. H. Molson did not exaggerate when he said that the debate on October 18, 1950 on nationalized transport moved quickly from coal prices to restaurant cars, to C licenses for road transport, to steamers to Ulster, to interest rates, to hotel executives. See 478 H. C. DEB. 2849 (5th Ser. 1950).

[19] The main sources of information at present about the public corporations are their annual reports and accounts which are laid before Parliament. These are generally laboriously prepared, voluminous, rather expensive, and published with considerable delay. Although full of less important *detail*, historical facts, ex-post-organized *politique raisonnée*, etc., they are as a rule singularly non-committal and

It must be remembered that the field of free action left to the public boards is more limited than is generally realized. Price changes must nearly always be approved by the ministers, investments are subject to limitation and have to be fitted into the national pattern, output targets are given by the government. Certain other matters such as recruiting of labor, welfare, education, housing are often a joint responsibility of a board and one or more ministers. Thus, *e.g.*, the Minister of Labor and National Service and the National Coal Board are together primarily responsible for recruiting men into the mines.[20]

F. Formulation of Objectives

No doubt the boards of the various corporations have been doing their best. But do they know where they are trying to go? Aids to navigation are useless if the captain of the ship is not told his destination. The nationalization acts give the corporations a variety of directives. We shall analyze them later. Some of them are conflicting; none give a clear guide to economic action.[21] To be "efficient" and "economical"; to "co-ordinate"; to "provide . . . an adequate . . . and properly integrated system"; to "further the public interest in all respects"—these are some of the ends. It has been the task of the boards of the public corporations to find the means to secure them. What institutional arrangements and economic policies do such objectives indicate? Is it the maximization of profits (or minimization of deficits); a "tidy" selling organization, *e.g.*, with uniform or zone-delivered prices; or the avoidance of deficits and hence subsidies at all costs;[22] high wages; or a unit of high technical efficiency; an intensely happy corporate organization; maximum service; cheap products; immediate gains or conservation of national resources? One could ask many questions, each of the utmost importance. The ends are numerous and if all could be satisfied simultaneously there would be no problem. The difficulty is that not only are many of those objectives imprecise or incapable of quantification but they also conflict with each other. Many of them are aims which can be solved only by political economy. They involve value-judgments. In considering the

vague on the essential facts of policy, marketing, and planning. The authors of the corporations' reports often assume in their readers a level of intelligence which is not too high. By contrast, the chapters on accounts are usually of a high calibre and have earned well-deserved praise. But the chapters and statistics dealing with prices, charges, investments, financial policies, wage policies, labor policies, etc., are less satisfactory.

[20] 478 H. C. DEB. 375 (written answer) (5th Ser. 1950).

[21] In this belief I am strongly supported by D. N. Chester who writes: "The National Coal Board, for example, has among its duties 'making supplies of coal available, of such qualities and sizes, in such quantities and at such prices, as may seem to them best calculated to further the public interest in all respects, including the avoidance of any undue or unreasonable preference or advantage.' This is a very large umbrella capable of covering many different schools of thought, for all are concerned with furthering the public interest in all respects, though those who wish to take special advantage of different elasticities of demand may be a little chilled by the last eleven words. There is thus not much guidance here." *Notes on the Price Policy Indicated by the Nationalization Acts*, 2 OXFORD ECONOMIC PAPERS 69 (Jan. 1950).

[22] There is little scope for state subsidies under the acts. But the subsidization of one branch of a corporation's activities by another goes on and hence of one class of consumers by other classes (rail by road, Atlantic by internal trips, coking coal by house coal); see p. 739 *infra*.

economic problems of public corporations one arrives at the same conclusion as Mr. Colin A. Cooke of Magdalen College, Oxford, *e.g.*, that "to be real economics must be political; it must become POLITICAL ECONOMY."[23] Running a nationalized industry is a problem. In theory Parliament, on behalf of the community, makes the political decision; it selects the ends. It is for their agents, the public corporations, to devise the economy to achieve those ends. As we shall see later, the failure of Parliament to make its political decisions precise makes it difficult for the corporations to select the appropriate "style" of economy.

We have numerous chairs in universities and various institutes, but to the best of my knowledge, there is no senior lectureship, let alone a chair or an independent institute, with sufficient means for studying the nationalized sector of industry from the economic or social viewpoint.[24] A non-political institution for the study of nationalized industries could do much to fill the gap, and to help the consumers' representatives in the nationalized industries to perform their functions more efficiently than at present.

G. Bureaucracy

The supply of talent being limited in the administration of public corporations, whose "style" or pattern of economic action is not determined, it is not surprising that in spite of all disclaimers or professions of best intentions not to behave otherwise but commercially, people with civil servants' traditions and "civil service" methods of administration are winning the day everywhere. The passion for unification, standardization, co-ordination, in many cases encouraged by the law, as well as the rule of precedent, are establishing themselves everywhere, be it transport charges, passengers' fares, charges for gas and electrical fittings, or internal relations of the corporations. We see such pictures as the Chairman of the Colonial Development Board (Lord Trefgarne) resigning on the ground that his corporation is given no guidance as to the "pattern" of behavior. It is easy to say that the pattern is "commercial," that the corporations are to pay taxes or follow the most progressive methods of presenting their accounts; in fact, nothing is more distant from the minds and the actions of the boards than a commercial outlook.

Because of the constant stonewalling by the ministers when serious parliamentary questions are asked, facts are not known to the public. Public corporations are very responsive to such informed criticism as is forthcoming, although this is often vague and doctrinaire; while as a rule the boards' headquarters prefer to keep facts to themselves, although here too the more progressive boards are more communicative than others.

[23] See Colin Cooke, *Economics or Political Economy*, District Bank Review, June, 1948, p. 8. "Today practice is ahead of theory. . . . The debate is not on what means would be employed to bring about a given end, but on the more decisive, prior question 'what is the end that should be chosen?'" *Ibid.*

[24] The Acton Society has been studying nationalization from a political viewpoint and has issued an interesting series of publications on problems of nationalization of which public accountability is the most important.

H. Is Nationalization a Success?

It is very easy to praise or to blame the nationalized industries. The controversy cannot in fact be settled. Without some criteria of judgment we would have something like the mad race of *Alice in Wonderland* in which everyone won or everyone lost.

There is little real help forthcoming from the world of statistics, for as Mr. Seers pointed out:[25]

> The fully trained graduate can produce within a morning a statistical memorandum supporting or destroying any proposition. . . . As a very elementary example, he will readily show that less coal is produced or exported than in 1938, *ergo* nationalisation is bad; or alternatively that there has been an upward trend in coal-mining productivity since vesting day, *ergo* nationalisation is good.

Even if all evidence points in one direction (say against nationalization), long runs (which irritated Lord Keynes so much) may go into action or the argument be switched into the elusive path of what worse things would happen had nationalization not been applied. The ministers have often painted the gloomy picture of calamities that would have befallen the nation had, *e.g.*, the coal mines been left in the hands of private owners.[26]

The apparent success or failure of public corporations depends on the criteria by which they are judged. The Conservatives have blamed nationalization whenever the corporations have shown losses, while some Socialists maintain that success should not be judged by the ability of a nationalized industry to show a surplus; the wheels should run without the grease of profit.

The British Electricity Authority has commissioned Royal Academy style artists to design posters for their series, "Portraits of Power Stations," showing to the public the beauty of new power stations. Controversy immediately started in the press over whether the users' money should be spent on those posters, especially at a time when the utmost economy of electric current was necessary to reduce the danger of electricity breakdown. The school of economizers and the school of public relationship of nationalized industries found themselves in headlong collision.[27]

Dissatisfaction is not confined only to the Opposition. Supporters of the Labor Government criticize many aspects of nationalization. Some say that it has not solved the problem of monopoly, others that the workers are not allowed to play a

[25] D. Seers, *On the Dangers of Reading Statistics*, 60 ECON. J. 622 (Sept. 1950).

[26] See, *e.g.*, Mr. Noel Baker's pamphlet, COAL (Labor Party, London, 1950) in which he chooses to quote the opinion of the Chairman of I.C.I. (p. 4).

[27] The following is typical: Miss Ethel M. Jones, in a letter to the Evening News of Nov. 19, 1950, criticized the posters announcing "Another New Power Station!" She said: "Whether the posters are intended to give the impression of affluence, or to make clear the achievement of the Socialists alone, I know not, but it is one more example of the careless abandon with which the Government spends our money in financially hard times." The B.E.A. says it is not intended to convey that the nationalized industry is taking credit for these power stations. The object is to show that something is being done to meet electricity demands. Something clearly to gladden the hearts.

sufficiently active part; some that the consumers' interests are not well looked after; and others that civil servants have gained ascendancy in the administration of the boards and that centralization[28] and arbitrariness of decision have increased everywhere. There is a group who resent compensation to the former owners having been made a charge on individual corporations' earnings thus making it more difficult for them to show profits and grant substantial wage increases to their employees. These are only some of the issues on which opinion is divided within the same party. Can one conceive a more violent condemnation of the way nationalized transport is administered than the words of the Labor member, Mr. Poole, in a debate on transport in the House of Commons,[29] when he declared that the Minister of Transport "has not the remotest conception of what is required in a nationalized transport undertaking to make it successful"? The numerous district resolutions on the Agenda of the forty-ninth Labor Party Conference of 1950 show how wide is the array of objections to the present forms of nationalization. Some of the conclusions would have far reaching economic consequences,[30] in so far as they would destroy the

[28] In the first general debate on nationalization in the House of Commons, Mr. Albu, M.P. (Labor), made this point very clear when saying: "Here I would like to scotch another myth created by the Opposition. They are trying to make the case that they alone are the decentralizers, that they alone believe in the decentralization of management to the lowest possible level. That is untrue, Hon. Members on this side (labor) are as interested as Hon. Members opposite that management shall be decentralized as far as possible. That is evident from the changing structure of the boards which have been set up under the various Acts and the changes taking place in the Coal Board." 478 H. C. DEB. 2871-2872 (5th Ser. 1950).

[29] He went on to appeal for the suppression of the issue of C licenses for private lorries, *viz.*, those authorizing the holders to carry exclusively in connection with their own business, in order to strengthen the Transport Commission's monopoly of road transport. 478 H. C. DEB. 2090 (5th Ser. 1950).

[30] The following two resolutions taken from the Agenda of the 49th Annual Conference of the Labor Party in 1950 indicate the extent of the people's interest in various facets of the problem. The first (Mitcham) resolution below received much support from the delegates:

"This Conference agrees that the nationalization measures now on the Statute Book are important steps in the social development of the people but declares that it is necessary to bring home to those employed in the industries and the general public the importance of social ownership.

"To this end it is necessary:

(a) That the present capitalist method of judgment—namely, the Profit and Loss Account—should be ended, and further to this the sums paid to former owners as compensation should be placed as part of the National Debt and not retained as a drag on the industries.

(b) That in order to obtain the wholehearted cooperation of the employees and consumers the various advisory and consultative committees, representing these interests, should be integrated and given important duties at all points of the managerial apparatus, subject to the overriding authority of the Minister involved.

(c) That the emphasis should be altered from competing commercial concerns, each operating as a separate unit, to organization based on service. To this end, joint gas and electricity showrooms, joint billing, joint transport repair service and bulk purchase of manufacture should be normal practice and savings obtained by ending complicated and costly separate accounting systems.

(d) That this Conference recognizes that much development work to be undertaken is of a non-profit nature, such as rural electrification, railway electrification and modernization and other works of similar nature; also the meeting of consumer demands of a special type such as cheap fares.

This Conference therefore declares that the whole purpose of the national undertakings must be that of serving the best interests of the whole community." Mitcham Committee, Labor Party.

Price of Coal. "This Conference notes that the cost of coal has had to be increased owing to the higher cost of transport, and that such increase is to be met by consumers in this part of the country to a greater extent than in some other areas. It expresses dissatisfaction that this is so. Conference is of the opinion that coal, as a nationally owned commodity, should be available to the entire nation at the same price and now requests that the necessary steps be taken to bring about such position." Brighton Borough, Labor Party.

financial boundaries between one state industry and another, which are at present fairly rigidly maintained. This would bring us nearer to a new kind of "functional finance" applied to inter-industrial relationships.

I. Nationalization and Various Forms of Public Agencies

In order to be able to try to answer these questions we must distinguish between nationalization with which this work is concerned, and state enterprise, and further bear in mind that a public corporation may be the instrument for administering one or the other. Hence public corporations should not be associated solely with nationalization, or state enterprise expected always to take the form of public corporations. Nationalization, to start with, need not always take the form of an enterprise. The nationalization of development rights under the Town and Country Planning Act, 1947, does not associate itself with an entrepreneurial form of activity. The nationalization of mining royalities in 1938 vested intangible rights in the Coal Commission, which by no stretch of imagination could be regarded as an entrepreneur but rather as a regulatory or licensing body. On the other hand, a state brewery at Carlisle (with its origin back to the first World War), or the Forestry Commission, which operates under the Forestry Act, 1919,[30a] as amended, cannot be regarded either as public corporations or as a form of nationalization, any more than can a factory or workshop acquired or started during the 1939-45 war or the exploitation of opencast coal which is under the Opencast Directorate of the Ministry of Fuel and Power.[31] Nor should nationalization be laid exclusively at the doorstep of any one political party. In 1928 in *Britain's Industrial Future*, the Report of the Liberal Industrial Inquiry, which was largely inspired by Keynes, advocated the further development of public boards (p. 458). The nationalization of coal royalities in 1938[31a] and the establishment of the British Overseas Airways Corporation of 1939 were largely of Conservative ancestry. The London Passengers' Transport Board was of mixed parentage, fathered by Mr. Herbert Morrison but brought forth in 1933 by a National Government.[31b] The prime motive in all these cases was the fostering of efficiency by means of unification, size, and elimination of competition in an economic background which was said to show excessive productive capacity.

The protection of the domestic sugar beet industry was the motive behind the formation of the British Sugar Corporation in 1936[31c]—a semi-public board of which

The protection of the domestic sugar beet industry was the motive behind the a large bloc of stock is held in the Treasury's portfolio. The current plans for

[30a] 9 & 10 GEO. 5, c. 58.

[31] For a detailed account of the production and marketing of opencast fuel which started in earnest during the war in 1941 as a state enterprise (run by a government department) and on the relations with the National Coal Board, see PRODUCTION AND MARKETING OF OPENCAST COAL, SIXTH REPORT FROM THE SELECT COMMITTEE ON ESTIMATES WITH MINUTES OF EVIDENCE AND APPENDICES (No. 142, Session 1948-1949).

[31a] Coal Act, 1938, 1 & 2 GEO. 6, c. 52.

[31b] London Passenger Transport Act, 1933, 23 & 24 GEO. 5, c. 14.

[31c] Sugar Industry (Reorganisation) Act, 1936, 26 GEO. 5 & 1 EDW. 8, c. 18.

nationalizing the Corporation will only complete the process started fourteen years ago.

The earlier public corporations were designed to meet limited economic needs but for the Labor Party nationalization is an end as well as a means. It is not therefore surprising that after their coming to power in 1945 there appeared a profusion of new public corporations and fresh regulatory devices. It is however open to argument whether a Liberal or Tory government would not, in the circumstances of the post-war years, have been almost as prolific in setting up new forms of state activity in the industrial field.

J. The Essence of Nationalization

Nationalization then and now can be defined as vesting by law the ownership in certain instruments of production, industry, or commerce in the nation (whether by means of public corporation in form or not), through expropriation in most cases against compensation of the former owners, whether private or public,[32] or by limiting and excluding of future ownership of productive assets. Hence two aspects of nationalization: as the name indicates, under nationalization the nation as a whole becomes the owner; moreover, the doctrine requires that the profit motive should give place to another motive referred to sometimes as "service," sometimes as "national interest," "public interest," "social instinct," "negation of private interest," "social responsibility,"[33] or "public service."

Under nationalization there is no cushion to bear the impact of losses. In a public company limited by shares there is the shareholders' capital to bear losses. In the absence of reserves under nationalization a loss is borne either by the buyers of nationalized products or by the state which grants a subsidy. Writing off capital is well nigh impossible especially if it involves cutting down market stock. The shock to national credit would be too big. We must, however, not allow ourselves to fall into the trap of imagining that because an industry is nationalized the losses are therefore necessarily borne by the whole nation. This is only so if a subsidy is paid. A loss of an Area Gas Board is recouped by a rise in the local price of gas.

It is the Socialists who have been responsible for the great extension of nationalization and it is their motives which must now be studied. Some of those motives have perhaps to some extent been rationalized ex post facto, others have been clearly present at the time when the original decision was taken.

The following guide to nationalization, which appeared in a semi-official London Party publication in 1948, is intended somewhat to stem the ardor of the nationalizers.[34] Industries are ripe for nationalization because they are:

[32] A colliery belonging to a cooperative may pass from social hands to the nation as a whole.

[33] See LABOR AND THE NEW SOCIETY: A STATEMENT OF THE POLICY AND PRINCIPLES OF BRITISH DEMOCRATIC SOCIALISM 19 (London, August 1950).

[34] PUBLIC OWNERSHIP: THE NEXT STEP (London, 1948). The pamphlet is the second of the discussion series entitled TOWARDS TOMORROW.

(1) basic to other industries, to human life, health, or defence;

(2) monopolized;

(3) inefficient, because unable to find capital for development, split up into units too small for economic co-operation, or burdened with very low standards of management;

(4) very large investors of capital and therefore particularly important as investment-leaders, in the combat against trade depression. [Let us observe, *en passant*, that the argument is based on the belief in the efficacy of counter-cyclical investments of resources.] Those industries have much influence on the level of employment;

(5) industries suffering from bad industrial relations.

But even if some industries qualify for nationalization, they should be subject to five tests:[35]

(a) Will it increase the people's power over their own destinies?[36]

(b) Does it lead to a higher standard of life by enabling industry to perform a better and more economical service to the nation?

(c) Does it lead to a more equal standard of life?

(d) Does it lead to a more stable standard, by promoting full employment?

(e) Does it extend industrial democracy?

These are nothing else but the well known "welfare criteria": maximization, stability, equality, and freedom.

In April 1949, the Labor Party published *Labor Believes in Britain*, a program of action, which officially adopted a brand of *Etatismus*, consisting in competition between private and state enterprises in the same trade.[37] Much of the earlier case for nationalization was repeated in August, 1950, in *Labor and the New Society*, which further maintains that public ownership makes an industry directly "accountable to the people," that it extends opportunity for promotion; and that by discarding "the bad old incentives of fear and greed," by providing better motives it opens the way to the better incentives of responsibility and service to the community (p. 20).[38]

[35] Mr. S. J. Langley in an interesting article, *The Iron and Steel Act, 1949*, 60 ECON. J. 311 (June, 1950), subjects the nationalization of steel to various tests of which he listed four economic (efficiency, capacity, full employment, and availability of finance), and three political ones (breaking private monopoly power, regard to social capital requirements, fulfilling voters' mandate).

[36] When in 1848 the French railways were finally to be "assumed" by the state, one of the main arguments of the nationalizers was that private holding of railways tended to "establish an aristocracy, and that it was not possible to maintain it under democratic government." This was violently opposed by *Le Journal des Debats*, May 25, 1848, and other journals. See reports, The Times, May 27, 1848.

[37] *Cf.* A. M. DE NEUMAN, ECONOMIC ORGANIZATION OF THE BRITISH COAL INDUSTRY 233-234 (London, 1934), Section on the Methods of Government Interference.

[38] Mr. Herbert Morrison, then Lord President of the Council, in a speech read for him at Battersea on Nov. 16, 1950, said that there was no need to nationalize everything: ". . . three categories of industries should be brought under public ownership: (1) the national or inevitable local monopolies, like electricity, gas or postal services; (2) certain basic industries, vital to the well-being of the whole community, like coal mining, transport, iron and steel; (3) industries, the private ownership of which have proved incapable of managing their affairs in an efficient way." The Financial Times, Nov. 27, 1950, p. 1, col. 3.

K. Nationalization and Socialization

As nationalization was advancing in a country with as complex a structure as the United Kingdom it soon became clear that the expansion of national ownership was bound to encroach on a field which was already serving public interest in one way or another, *i.e.*, municipal and cooperative enterprise. In the early days the words nationalization and socialization were almost synonyms in the Labor vocabulary. Seeing where things were advancing, the cooperative movement became apprehensive of its prerogatives and insistent on the difference between cooperative enterprise and capitalist enterprise and on the equality of the cooperative movement with Labor.[39] The word socialization acquired a new meaning, which was wider than nationalization. It meant either government supervision of an industry or enterprise or providing a motive of action which took some public criteria into account. Thus, in addition to the public corporations, an industry which has a development council, or the cooperatives which directly serve the interests of a large section of the community, can "in varying degrees" be regarded as socialized. Whereas one should in theory regard all nationalized industries as socialized, not all socialized industries take the form of public corporations nor is the absence of the private profit motive restricted to public corporations. "Socialization," said Dr. Edith Summerskill, the then Minister of National Insurance, to the West Midland Labor Party, "is synonymous with planning which does not necessarily mean nationalization."[40]

L. Public Corporations in Great Britain

What then is a public corporation? It is a form of state entrepreneurship which has not yet solidified. Sir Arthur Street, the late Deputy Chairman of the National Coal Board, has defined the public corporation as[41]

> a financially autonomous non-profit making body created by an act of state to provide a monopoly of goods or services on a commercial basis, ultimately responsible through the minister to Parliament and the public, but free from full and continuous ministerial control.

Comprehensive definitions are always difficult and must change with time. His definition, however, does not fully apply even to the National Coal Board. The financial autonomy which it stresses exists only partially—the Board cannot take recourse to the long term capital market, it has to borrow investment capital from the Minister of Fuel and Power. As to non-profitability, there is nothing in the statutes or in the behavior of the boards to stop them making profits, either annually or over a period.

[39] See PROCEEDINGS OF THE COOPERATIVE CONGRESS AT SCARBOROUGH (May 4, 1949) especially the motion of Mr. J. M. Peddie of the Cooperative Wholesale Society, which stressed that "Cooperation must be an equal partner with Labor, and not a docile supporter. It was not willing to sacrifice itself upon the altar of nationalization."

[40] See The Times, Oct. 16, 1950.

[41] Sir Arthur Street, in his address to the Royal Institution of Chartered Surveyors on Mar. 8, 1948, on *The Public Corporation in British Experience*, TRANSACTIONS OF THE ROYAL INSTITUTION OF CHARTERED SURVEYORS (London, 1948).

The monopoly[42] factor is by no means always present. The National Coal Board operates brickworks, owns farms, carbonization plants, etc.—activities in which it has no monopoly at all; even in coal production the monopoly is incomplete owing to the existence of opencast coal production outside the Board's jurisdiction and, to a lesser degree, owing to the existence of a small output in the hands of private owners, who are licensed by the Board.[43] Most public corporations are attempting to establish such monopolies and monopsonies as they can. These monopolistic tendencies are probably amongst the main problems of the future remaining to be solved. One day the possibility that better results may be secured by a more competitive setup within the public corporations (or perhaps by the breakup of the present giants) may have to be reconsidered. The interests of efficiency, the consumers, and the workers might be better served that way.[44] That this issue is not only of academic interest but one on which Britain's industrial future may well depend is realized by the Cooperative Party (which supports the Labor Government). They demand that "where the administration of production and distribution can be conveniently separated, this could be done without any sacrifice of the principle of social ownership."[45] In other words, in industries like coal, iron and steel, etc., where the separation can be done, the boards in charge of production should not be the same as the boards in charge of distribution of the products. This may not suit the administrative routine of some of the present boards, but the reform is practicable.

In discussing the economic "style" of public corporations we must distinguish between their shape which is largely given to them by law, and their economic behavior in administering their resources. The public corporations as shaped at present cannot fully conform to a commercial pattern of behavior. Is it not a duty of the British Electricity Authority to supply electricity to the country dwellers at uneconomical prices? The duty is the result of its constitution, and not of a decision of the Authority.[46] Moreover, the blend of elements of commercial and the

[42] The word monopoly has so many meanings as to be almost vague. Monopoly can apply to the right of exclusively operating some activities or handling some products, it can also apply to a style of economic behavior, *e.g.*, not allowing the various plants or units to compete, or fixing prices, above average costs.

[43] Small operators' licenses can be withdrawn or the operators may be asked to pay a high royalty.

[44] The problem of a more competitive policy for public corporations has been raised already in the first year of the National Coal Board's existence (see Coal Corporations, my letter to The Times, Sept. 20, 1947). The subject has been taken up again in a thoughtful article on *Controlling the Giants*, in The Economist, Nov. 4, 1950, pp. 680-681.

[45] See BUILDING THE NEW BRITAIN (REPORT SUBMITTED AT THE ANNUAL CONFERENCE OF THE COOPERATIVE PARTY) 7 (1950).

[46] The clash between the North of Scotland Hydro-Electric Board and the British Electricity Authority over the terms on which the latter should buy electricity from the former's new generating station at Loch Sloy is a good example. Both corporations wished to exercise their powers in a commercial sense; the Authority wished to buy electricity only in peak hours spread over the whole week, thus treating the supply as an emergency reserve, whereas the Scottish Board wanted to manage supply in a way which would secure the highest revenue. The dispute was settled in November, 1950, but not until some consumers were deprived of electric current (see The Times, Nov. 13, 1950).

public interest in the actions of the public boards has never been clearly gone into by the legislator or defined.[47] It is already giving much trouble, especially when the conflict concerns two or more nationalized undertakings.

Bearing in mind all these reservations, we can define the new public corporation, of the "classical" type, *i.e.*, one which does not allow for the representation of interests, as:

> A statutory, minister-appointed entrepreneurial administration by a non-representative board of a branch of the economy vested in the Nation, actuated to some extent by motives other than private gain, operated as an autonomous accounting unit, enjoined to avoid making losses, and to a point responsible to a minister and free from day-to-day questioning in Parliament.

This defines the modern "classical" public corporation. The boards of some of the older corporations were composed of representatives of particular interests. Practically all corporations formed since 1945, including the Ulster Transport Authority (which is independent of the British Transport Commission) are of this "classical" style in so far as the general formula of management is concerned. We do not include here a galaxy of semi-public corporations, nor organizations directly under government departments, such as administer most of the bulk buying and selling of commodities, nor such institutions as the old British Sugar Corporation, the Agricultural Mortgage Corporation of 1928, etc., all of which fall outside the orbit of our subject.

M. Public Corporations and Nationalization

The new public corporations have been given different names such as boards, authorities, councils, commissions, and corporations. There is probably little logic in the use of these names. The various public corporations differ considerably in their constitutions, methods of administration, extent of their power, and degree of monopoly, but they have certain common features. They are all nominally supervised loco parentis by their respective minister who has the right officially to issue to them directives of a "general character."[48] They nearly all have to act in the "public interest," which is a criterion not easy to establish in theory or in practice. They are enjoined not to use discriminatory practices, but this mandate is left rather vague. They are obliged to account publicly for their activities, but their annual reports and other channels for disseminating real information vary in size, form, and contents, and the material published is not always informative although standardization

[47] As a result, one of the main tasks of the boards is to work out how they shall achieve the ends which they regard to be in their own and the public's interests, in a way which they think economical. Thus usually (though not always) they disregard the external diseconomies of their actions and make room for unpredictable and arbitrary decisions. To say, as some people do, that the corporations are best qualified to appraise the diseconomies which they impose on the outside world is sheer pipe dreaming.

[48] The number of ministers who act in a parental capacity is large and includes the Secretary of State for Scotland and the Minister of Fuel and Power, who has to nurse coal, gas, and electricity (with the exception of the North of Scotland Hydro-Electric Board), the Minister of Transport, the Minister of Civil Aviation, the Colonial Secretary, the Minister of Food, and the Minister of Supply. See table 3, *supra*.

of reporting is being introduced. The corporations must avoid making losses (at least over a number of years), but there is nothing to stop them building up reserves out of profits. They are all to be "efficient," although there is little in the statutes to guide them in finding the proper criteria of efficiency. None of the recently formed public corporations include consumers' or workers' representatives charged with the task of defending the consumers' or workers' interests (although the Area Electricity and Area Gas Boards each include an *ex officio* representative of the users; active trade union leaders have been appointed as part-time members of the boards, but they rarely serve on the boards of industries whose workers they currently represent). The syndicalist solution was thus avoided.[49]

From the point of view of the workers, consumers, and users of the nationalized sector of industry, it is most important that the corporations' emphasis is on the removal of all remnants of competition and on the reenforcement of monopoly, and that these objectives should be carried out as speedily and thoroughly as possible. Competitive elements are being eliminated in favor of unification, coordination, uniformity, equalization of charges,[50] and centralized financial responsibility.

As experience accumulated with time, each successive public corporation was built on a less centralized model, and under the pressure of public criticism a small dose of decentralization has been introduced into such earlier bodies as the National Coal Board. The shadow argument however over centralization *versus* decentralization has diverted attention from the more fundamental issue of whether a monopolistic (or cartel-like) solution of the style of commercial behavior in the British corporation[51] is really better than a competitive solution. Let us not be misled by side issues. The fact that, *e.g.*, the Iron and Steel Act, 1949, retains the old companies and lays great stress on decentralization while the Coal Industry Nationalisation Act, 1946, leads to centralization does not mean that the former industry will be any more competitive than the latter. The absence of effective consumers' representation *vis-a-vis* the boards of public corporations, and administrative convenience, together with the fear of making losses and thus incurring the criticism of the opponents of nationalization, have pushed the state industries in the direction of monopoly, thus weakening the position of the consumers. It is, however, an open question whether the interest of the consumers would be better safeguarded by an extended participation of consumers' delegates in running the nationalized industries. Nor would this solution necessarily be conducive to efficiency.[52] Efficiency, let us not

[49] See HUGH CLEGG, LABOR IN THE NATIONALIZED INDUSTRY 6 (Fabian Publication No. 141) (London, 1950).

[50] See case of London fares, Transport Tribunal, May, 1950.

[51] During the first general debate in the House of Commons on nationalized industries for which the Government allowed time on Oct. 25, 1950, in its sixth year of office, the need for decentralization was raised from all sides of the House, but very little has been said about the real issue of a competitive versus a monopoly solution. See 478 H. C. DEB. 2879-2880 (5th Ser. 1950).

[52] On this matter, we in Great Britain have much to learn from the French pattern of nationalization in which the consumer has, at least theoretically, a big and direct share in the administration.

forget, is one of the consumer's allies, although not the only ally.[53]

The public corporations have so many facets, ramifications, and deviations from any common pattern that to understand their economic nature and significance one must resort to hard facts. These are considered in the pages that follow first by analyzing the main economic functions of each corporation and then by studying the way in which those functions are discharged.

II

PRIMARY ECONOMIC FUNCTIONS OF PUBLIC CORPORATIONS

The economic functions of public corporations are determined, to a large extent, by the authorization given by the statutes which have created them.[54] But the really important points depend on their own interpretation of their rights and duties. As the economic functions set by law are frequently very sketchy or imprecise, it is imperative in order to obtain a full picture to turn to pronouncements of ministers and also of lawyers and persons occupying responsible positions in the public corporations. With time, as economic problems of pricing, marketing, and planning emerged, solutions had to be sought and with them came a delineation of spheres of influence of particular corporations and a pronouncement on attitudes towards matters which can best be described as "style" of economic behavior. Of these the two extremes are a competitive behavior and a cartel behavior. It seems that the latter has, at least at present, completely swept the deck[55] in the British nationalized sector, and, as seen at present, the cartel behavior is still on the ascendancy.

In this section the corporations will be first dealt with seriatim in order to discover what the statutes say their primary economic functions should be. We shall see that although vaguely designed, those primary functions which are laid down are generally soundly outlined. Then we will attempt a more general analysis of how some of these economic functions are interpreted in practice. Finally there is the corporations' own interpretation. This accumulates day by day. Those powers of interpretation of their economic prerogatives are enormous and in many cases cannot effectively be questioned.[56] Thus an effective *cordon sanitaire* is established around the corporations' economic decisions. In the next section we will

[53] This problem has been very neatly analyzed by Mr. I. J. Pitman, M.P., in his thought-provoking pamphlet, MANAGEMENT EFFICIENCY IN NATIONALIZED UNDERTAKINGS (British Institute of Management) (London, 1950).

[54] There is also in existence a considerable body of statutory instruments regulating various legal details.

[55] The persistent attempts of the National Coal Board to establish a system of zone-delivered prices are pointing in this direction. The principle has been repeated recently although rather timidly in a document called PLAN FOR COAL—THE NATIONAL COAL BOARD'S PROPOSALS, dated Oct. 1950, and issued on Nov. 14, 1950; see *e.g.*, §§159 and 160. Finally zone-delivered prices were introduced in household coal with the support of the Domestic Coal Consumers' Council.

[56] Some of the statutes, *e.g.*, the Transport Act, 1947, §3(5), expressly state that although the Act imposes general duties on the corporation, nothing in the section that lays down the functions shall be construed as imposing on the corporation, either directly or indirectly, any form of liability enforceable by proceedings before any court or tribunal to which it would not otherwise be subject. An identical cocoon surrounds the decisions of the Iron and Steel Corporation as to the extent and character of its duties.

discuss the provisions relating to the way in which the primary functions should be carried out which are common to most corporations.

A. The Fuel and Power Trinity

1. *The Coal Industry.* According to statute, the primary economic functions of the National Coal Board are to work and get the coal in Great Britain, to the exclusion of any other person;[57] to secure the efficient development of the coal-mining industry; and to "make supplies of coal available" of such qualities and sizes, in such quantities and at such prices, as may seem to it best calculated to further the public interest in all respects, including the avoidance of any undue or unreasonable preference or advantage.[58]

Almost every passage here lends itself to a large number of interpretations. The economic "style" in which those primary functions are carried out and interpreted, will decide what type of economy will prevail. What is the meaning given by the Board to "making supplies of coal available," to "the avoidance of any undue or unreasonable preference or advantage," and to many such fundamental concepts of economic behavior? It is those meanings and the action which follows them, that consumers, traders, and workers will have to face.

A representative of the National Coal Board maintained before the Transport Tribunal Consultative Committee that "making supplies of coal available" means ". . . available for use. . . ."[59] This would seem to imply that the National Coal Board should take over the wholesale and retail distribution of coal. Indeed, Mr. Shinwell, when Minister of Fuel and Power, said in Parliament that the Board would be concerned to see that distribution was carried on as efficiently and as economically as possible, and explained that there was nothing to prevent the National Coal Board engaging in all those activities which were undertaken by the former colliery companies.[60] These activities included the wholesale and retail distribution of coal. Actually the then Minister of Fuel and Power did not seem to have made up his mind on this question, for later on he said in Parliament that the Board would not be responsible for the retail distribution of coal, as for the most part the activities of the colliery undertakings before nationalization were confined to sales from the pithead.[61] The very next day he said that as some of the colliery undertakings had engaged in retail distribution, it may be that the Board might want to promote further activities in this sphere, and should not be hindered.[62] In fact, the Board acts, in many cases, as retail as well as wholesale distributor. The Board has an extensive coal distribution business in Lancashire; it also owns ships and land-

[57] The Act makes room for some exceptions to this fuel monopoly.

[58] Coal Industry Nationalisation Act, 1946, §1(1).

[59] See PROCEEDINGS OF THE PERMANENT MEMBERS OF THE TRANSPORT TRIBUNAL SITTING AS A CONSULTATIVE COMMITTEE 168 (Jan. 4-Feb. 8, 1950).

[60] 418 H. C. DEB. 714 (5th Ser. 1946).

[61] Standing Committee Report, House of Commons, Feb. 12, 1946, col. 31.

[62] *Id.*, Feb. 13, 1946, col. 56.

sale depots. It has been prosecuted for giving short weight just as are other coal merchants.

It would then seem that the question today is, must the Board in order to carry out its task of "making supplies of coal available," squeeze out existing merchants and so extend its already not inconsiderable stake in distribution? Under the original nationalization statute the National Coal Board had no power to extend its activities (principally its overseas marketing) outside Great Britain. In 1949 this limitation was removed.[63] In the winter 1950-51 the Board has been instructed to buy coal abroad for import to Great Britain.[64] Subject to the Minister's authorization the potential sphere of the Board's activity has thus been enormously extended in the field of overseas activities.

By now, "making supplies of coal available" is already persistently interpreted by the Board as available in the zones of consumption, and the price is thought of as the cartel price or zone-delivered quotation with all the paraphernalia of positive or negative freight absorptions and a departure from the competitive structure of pit-pricing. It is surprising that of the numerous commentators on the Board's Reports and its *"National Plan"* scarcely anyone has passed any opinion on the proposed scheme of zone-delivered pricing although this is probably one of the few really definite suggestions emanating from the industry and more and more insistently repeated.[65]

With regard to "furthering the public interest," Mr. Shinwell, when Minister of Fuel, said in 1946 that its meaning depended upon the circumstances. It might be appropriate, in certain circumstances, in order to further the public interest not to export coal but to utilize it in such a fashion as would enable us to export other commodities. Such circumstances have indeed arisen in the second half of 1950 owing to the coal crisis. On the other hand, there might be such an abundance of coal in given circumstances as would enable the industry to supply more than adequately the overseas consumers. The Board has, it would seem, the duty of analyzing the circumstances, for the Minister said: "Who are better fitted to judge than the people who are running the industry?"[66]

The statutory duty of "avoidance of any undue or unreasonable preference or advantage" appears to imply that the Board must offer similar terms to all customers,

[63] Coal Industry Act, 1949. This Act also allows the National Coal Board to terminate certain contracts if they are of opinion that they are likely to hamper the efficient performance of their functions. The same Act makes an administrative provision by authorizing the appointment of a second deputy chairman of the Board. This important prerogative of the Minister was not exercised until the middle of 1951.

[64] 481 H. C. DEB. 39-42 (5th Ser. 1950). The buying is done through private firms acting as agents.

[65] On the subject of the National Coal Board's desire to see a system of zone-delivered prices instead of pithead prices, see, *e.g.*, its ANNUAL REPORT for 1949, p. 167 (as yet put forward very tentatively). Also the PLAN FOR COAL—THE NATIONAL COAL BOARD'S PROPOSALS (Nov. 14, 1950), §§159 and 160 commit the Board to zone-delivered pricing and to "meeting-consumers' demands most economically" whatever this may mean. It is not clear what will be the attitude of the Industrial Coal Consumers' Council to zone-delivered pricing.

[66] See Standing Committee Report, House of Commons, Feb. 13, 1946, col. 16.

including public corporations. This impression is strengthened by the Lord Chancellor's statement that it would be highly improper to supply coal to steel works taken over by the government at a price different from that at which coal is supplied to steel works remaining under private ownership.[67]

The avoidance of preferential treatment is one of the primary economic duties of the coal industry. But what is it that the legislator requires? There are at least two points to which attention should be drawn. In the first place, the avoidance of undue preferential treatment applies to the whole field of coal supplies, it covers all the commercial levels, unlike electricity or gas (or gas coke), where it is referring only to activities on an area level. In the second place there seems to be inherent in the approach to the avoidance of preference a fundamental distinction between the coal industry and the other nationalized fuel industries. The National Coal Board is to avoid what seems *to it* a preferential treatment whereas electricity and gas have to avoid preferential treatment as it appears *to others*. The latter fact may be established on objective criteria, the former is subjective and presumably cannot be questioned beyond the fact that it has been duly considered by the National Coal Board.

The Board alone determines the prices, although at present increases at home have to be sanctioned by the Minister. It is presumably in the public interest for the Board to build up reserves, but it is not clear from authoritative statements whether the phrase "making supplies of coal available . . . at such prices, as may seem to them best calculated to further public interest . . ." could be used as a justification for building up large reserves by charging high prices. The gas industry has a clear mandate to reduce prices of gas and coke to the minimum. There is not such a strong directive in the case of coal, electricity, or indeed scarcely any public corporation. The demand for "reasonable charges" in Civil Air transport and for selling raw cotton by the Raw Cotton Commission "at prices as low as may be possible" comes nearest to this requirement.

Reserves could be built as a result of reductions in cost following technical progress and reorganization, reflected in better productivity, but the National Plan for Coal commits the Board to distribute some of the promised savings to the miners.[68] This makes it more likely that if reserves are to be built up, they will have to come from high prices rather than from low costs although it should be mentioned that the Minister of Fuel, in reply to a suggestion that the Board as a monopoly would be permitted to charge excessive prices to enable it to build up a reserve, said that effective arrangements in the form of Industrial and Domestic Coal Consumers' Councils had been made to prevent the Board from raising prices unduly.[69] How-

[67] See 142 H. L. DEB. 3 (5th Ser. 1946).

[68] PLAN FOR COAL—THE NATIONAL COAL BOARD'S PROPOSALS §10 (1950). The likelihood of reduced costs is called into question by the safeguarding clause that all expectations are based on mid-1949 prices.

[69] Standing Committee Report, House of Commons, Mar. 27, 1946, col. 634.

ever, this statement might in the light of events be considered a little rash.[70]

We can end with two short statements on coal by Mr. Philip Noel-Baker, M.P., the present Minister of Fuel and Power:[71]

> Public enterprise exists not merely to sustain the national economy, not merely to give better working conditions to the miners and others, but to serve the individual consumers, the householder and industrial user. . . . Coal was nationalized on 1 January, 1947. After so short a time it would be absurd to say either that nationalization had succeeded, or that it had failed.

2. *The Electricity Industry.* In studying the statutory duties of the electricity industry it is helpful to remember that the generation of electricity is a nationwide activity whereas distribution is predominantly a local function. Moreover, as the Deputy Chairman (Administration) of the British Electricity Authority summed up with perspicacity, for electricity when nationalization came "the change was one of organization rather than of character; it did not create a new monopoly, for electricity supply had always had a monopolistic character."[72] The same largely applies to the gas industry, whereas for coal, nationalization meant a much bigger change, where a new tradition had to be built from scratch. Unlike the Gas Council, the British Electricity Authority actually "handles" the product with which it is concerned.

The primary function of the British Electricity Authority is to develop and maintain an efficient, coordinated and economical system of electricity supply in all parts of Great Britain, except the North of Scotland.[73] The Authority has to generate or acquire electricity and provide bulk supplies for the Area Boards and may supply certain consumers direct. It also has to coordinate the distribution of electricity by the Area Boards and exercise a general control over their policies.

The Authority has taken over from the former owners the generating plants and associated transmission lines and the network of main transmission lines ("the Grid") from the former Central Electricity Board. Financial control over the Area Boards is summarized by Sir Henry Self as follows:[74]

> The Authority's responsibility for providing finance for the whole industry is matched by their related function of exercising central financial co-ordination and control. . . . It vests in the Authority the sanctioning powers necessary to secure effective control of the overall financial position of the industry.

[70] *Consumers' Representation,* The Economist, Oct. 14, 1950, p. 598. For further reading on the effectiveness of Consumers' Councils, see A. M. de Neuman, *La Nationalization de l'Industrie et le Consommateur Britannique,* REVUE D' ECONOMIE POLITIQUE 238 *et seq.* (Paris, 1950); A. M. DE NEUMAN, CONSUMERS' REPRESENTATION IN THE PUBLIC SECTOR OF INDUSTRY (Students' Bookshops, Ltd., Cambridge, 1950); L. L. FREEDMAN AND G. HEMINGWAY, NATIONALIZATION AND THE CONSUMER (Fabian Publication No. 139) (London, 1950); *Protecting the Consumer,* The Electrical Review, Sept. 29, 1950, pp. 497-498.

[71] PHILIP NOEL BAKER, M.P., COAL 9, 3 (Labor Party, London, 1950).

[72] Sir Henry Self, *The Economics of Electricity Supply,* PROCEEDINGS OF THE BRITISH ELECTRICAL POWER CONVENTION 14 (London, 1950).

[73] The North of Scotland is served by the North of Scotland Hydro-Electric Board.

[74] See note 72 *supra,* at par. 28.

The primary function of the Area Boards is to acquire from the Authority bulk supplies of electricity and to plan and carry out the economical and efficient distribution of these supplies to persons in their areas who require them.[74a] In certain circumstances, an Area Board is allowed to acquire bulk supplies of current from other Area Boards or from other producers and to sell current to consumers outside its own Area.

Area Boards must promote the use of all economical methods of generating, transmitting, and distributing electricity. They must secure, so far as is practicable, the development, extension to rural areas, and cheapening of supplies of electricity. They must also avoid undue preference in the provision of such supplies, and promote the simplification and standardization of methods of charging for such supplies. Finally they have to promote the standardization of systems of supply and the types of electrical fittings.

Periodic estimates of revenue and expenditure of the Area Boards may have to be submitted to the Authority, and the Area Boards may be required to obtain the approval of the Authority for programs of development involving capital expenditure.[75]

3. *The Gas Industry.* The nationalization of the gas industry followed a pattern of maximum decentralization. The primary function of the Gas Council in London is only expressed generally as to advise the Minister of Fuel and Power on questions affecting the gas industry and matters relating thereto, and to promote and assist the efficient exercise and performance by Area Boards of their functions.[76] This includes the supplying of common services and manufacturing, etc., of plants for the Area Boards and gas or coke fittings for sale (except for export). The Council is the central financial body and the decisive factor in labor negotiations.

The primary function of the Area Gas Boards is to develop and maintain an efficient, coordinated, and economical system of gas supply for their areas and to satisfy, so far as it is economical, all reasonable demands for gas within their areas. Moreover, they are to develop the efficient, coordinated, and economical production of non-metallurgical coke and efficient methods of recovering byproducts obtained in the process of manufacturing gas. In order to carry out these functions each Area Gas Board can manufacture gas, acquire gas in bulk from any person including another Area Board, supply gas in bulk to another Area Board, distribute gas in its area, manufacture, treat, render salable, supply or sell amongst other things coke, byproducts obtained in the process of manufacturing gas and coke, and any other products made or derived from gas or coke. They can also sell, hire, or otherwise supply gas fittings and coke fittings and, in some circumstances, also undertake their manufacture, or the manufacture of plants for themselves or other Boards.[77]

[74a] Some Boards have recently interpreted the words "require them" as meaning that they need provide electricity for heating only if there is no alternative method of space heating.

[75] See Electricity Act, 1947, §1(1), (2), (4), and (6); §26(2).

[76] Gas Act, §2(1).

[77] *Id.*, §1(1) and (2).

B. Iron and Steel

Many people thought that when the Iron and Steel Corporation took over on February 15, 1951, it would control the whole of the iron and steel industry in Great Britain, thus overlooking that a number of firms would not be nationalized. This belief is to a certain extent fostered by Labor Party publications, *i.e.*, we read in one of them:[78] "The Iron and Steel Industry is basic in our economy .... Nothing less than public ownership will do." By contrast Mr. Strauss, Minister of Supply, declared that ". . . on the morning after vesting the only difference for the companies will be that the ownership of the securities has changed hands," *i.e.*, the Iron and Steel Act, 1949, will only place the ownership of 96 leading iron and steel companies in the hands of the Corporation. The individual companies will not be dissolved as in the case of nationalized transport, gas, coal, or electricity; they will continue as separate units and will preserve their separate managements.

The primary functions of the Corporation are to promote the efficient and economical supply of the products of the following activities: the working and getting of iron ore in blast furnaces, the production of ingots of steel (including alloy steel), and the changing of cross-sectional dimensions or cross-sectional shapes of steel by hot rolling in a rolling mill. It is also the Corporation's function to secure that these products are available in such quantities, and are of such types, qualities, and sizes, and at such prices, as may seem to the Corporation best calculated to satisfy the reasonable demands of the persons who use those products for manufacturing purposes and to further the public interest in all respects.

It remains to be seen how the Corporation will interpret these requirements, whether or not it will become a wholesale and retail distributor in order to "promote the efficient and economical supply," how it will determine whether or not a demand is "reasonable," and how it will decide what is the best way to further the "public interest in all respects."

The customary non-discrimination clause is added. The Act stipulates that the Corporation must secure that neither it nor any publicly owned company shall show undue preference to any persons or class in the supply and price of products. This is, however, without prejudice to such variations in the terms and conditions on which those products are supplied as may arise from ordinary commercial considerations or from the public interest.[79] The duty to ensure no discrimination is laid squarely on the shoulders of the Corporation, which is thus likely to claim full authority in the pricing of products. After this, the provision of the Act enjoining the Corporation to secure the largest possible degree of decentralization sounds a little hollow.[80]

[78] See FIFTY FACTS ON PUBLIC OWNERSHIP 41 (Labor Party, London, 1950).

[79] The whole of the paragraph in the text refers to §3 of the Iron and Steel Act, 1949.

[80] Unlike most nationalization acts, the Iron and Steel Act, 1949, states that the Corporation is to "secure the largest degree of decentralisation consistent with the proper discharge by the Corporation of their duties. . . ." Sec. 3(1)(c).

One wonders whether the phrase "public interest" would, *e.g.*, allow the Corporation to supply the National Coal Board at a lower price than the price at which it supplies other customers. This would in effect be the subsidizing of the National Coal Board from a "hidden source."

In order to carry out its functions, the Corporation is allowed to acquire by agreement interests in any company whose activities (direct or through subsidiaries) consist of any in which any of the companies to be nationalized were either engaged or allowed to carry on, before nationalization. The Corporation is also allowed to take part in the forming of any company for the purpose of carrying on any of the activities just referred to. It is given power to exercise all rights conferred by the holding of interests in companies.[81] The picture of a state holding company is thus nearly complete.

C. The British Broadcasting Corporation

A few lines will suffice to sketch this earlier public corporation. The primary function of the British Broadcasting Corporation is to carry on as public services from stations in Great Britain, broadcasting by wireless telephony and television of matter for the reception of the public in Great Britain, the Dominions, territory under British protection, and in other places. It can receive by means of stations established within Great Britain, matter sent by wireless telephony or television and messages sent by other processes of wireless telegraphy (being matter, messages, and communications the reception of which the Corporation is permitted to undertake by the current license); and it may develop, extend, and exploit the broadcasting services of the Corporation.[82]

D. Transport

The main obstacle to the proper development of public transport in Britain before nationalization was often held to be the lack of the so-called coordination of road and rail. The Transport Act, 1947, was intended, in the words of the Parliamentary Secretary to the Minister of Transport, to create "a sound structure, on which a healthy and progressive transport system can be built. . . ."[83] The extraordinary solution resorted to was the marriage of the two competitors.

It is not surprising, therefore, to find that the primary function of the British Transport Commission is to provide, or secure or promote the provision of, an efficient, adequate, economical, and properly integrated system of public inland transport and port facilities within Great Britain for passengers and goods with due regard to safety of operation.[84]

The Commission is a policy-making body. It does not itself operate transport but it has to ensure that its transport business is conducted as a single undertaking.[85]

[81] Sec. 2 of the Act.

[82] DRAFT OF ROYAL CHARTER FOR CONTINUANCE OF THE B.B.C., CMD. No. 6974.

[83] 431 H. C. DEB. 1994 (5th Ser. 1946).

[84] Transport Act, 1947, §3.

[85] SIR CYRIL HURCOMB, THE ORGANIZATION OF BRITISH TRANSPORT, BRITISH TRANSPORT COMMISSION 13 (1948).

The operating of transport is the task of the Executives. This separation of the policy-making and operational functions enables the Commission to supervise and criticize the Executives' day-to-day management; it is a critic with a public duty to discharge.

The Commission can *inter alia* provide within Great Britain port facilities and facilities for traffic by inland waterways, also such amenities and facilities for people using its services as may appear to it requisite or expedient to provide. By agreement with the owners it can also acquire private undertakings which are engaged in operations of the kind the Commission is authorized to carry on.[86]

So far six Executives have been established under the Transport Act, 1947. The Commission is thus left free to concentrate on general policy, coordination, and planning. Before they were set up, Mr. Ernest Davies, Chairman of the Parliamentary Labor Party Transport Group, said of the Executives:

> They will act as agents of the Commission, that is they will be responsible to it. In practice they will have complete responsibility in their own spheres. The Executives will employ their own staffs . . . and thereby any danger of their being regarded as civil servants is eliminated. . . .

This sounded like a magic formula for a guaranteed success. He added, however, that "the Commission have final responsibility for the finance of the Executives."[87] The Executives act, in fact, as agents for the Commission, exercising functions delegated to them in schemes approved by the Minister of Transport.

During their first years of existence, the Executives have been exercising their powers primarily in order to build up an operational apparatus which they regarded as best suited for their purpose. Some of them spent much time on regrouping a large number of small firms which, in their opinion, could not be considered efficient by modern standards.[88]

E. Overseas Development

The Overseas Resources Development Act, 1948, provides for the establishment of two public corporations—the Colonial Development Corporation and the Overseas Food Corporation. The latter's groundnuts scheme has acquired notoriety and its failure let to a considerable curtailment of the Corporation's activities.

The primary function of the Colonial Development Corporation is to secure[89]

> the investigation, formulation and carrying out of projects for developing resources of colonial territories with a view to the expansion of production therein of foodstuffs and raw materials, or for other agricultural, industrial or trade development therein.

Its Gambia eggs scheme was almost a complete failure.

The Colonial Development Corporation is only to a limited extent the product

[86] Transport Act, 1947, §2.
[87] ERNEST DAVIES, NATIONALIZATION OF TRANSPORT 11 (Labor Party, London, 1947).
[88] British Transport Commission, Press hand-out, July 3, 1950.
[89] Overseas Resources Development Act, 1948, §1(1).

of the dollar famine in Great Britain, and though it realizes the need to save and earn dollars, it considers that its work "transcends the immediate aims of attaining an external balance of payments and of maintaining full employment at home."[90]

The Act[91] tells us that the primary function of the Overseas Food Corporation is the investigation, formulation, and carrying out of projects for production or processing in places outside the United Kingdom of foodstuffs or other agricultural products and for their marketing. The Corporation's first project was the scheme for large-scale groundnut growing in East and Central Africa; after this proved a failure, the Corporation grew sunflower seeds.

Both of these Corporations can operate either directly or through other bodies.[92]

F. The Raw Cotton Commission

Buying, importing, stocking, and distributing raw cotton needed for manufacture in the United Kingdom and for re-export is the monopoly of the Raw Cotton Commission. The Commission is primarily concerned with the needs of cotton processors and secondarily with those of cotton re-exporters.

The Commission must sell raw cotton at prices which seem to it "best calculated to further the 'public interest' in all respects." The Act[93] goes some way towards raising the veil hiding the meaning of the phrase "public interest," for it requires the Commission to supply raw cotton to manufacturers

> at prices as low as may be possible consistently with securing that the revenues of the Commission shall be not less than sufficient, with any appropriations from their reserve fund . . . for meeting all their outgoings properly chargeable to revenue account. . . .

The Commission can operate schemes for giving a hedge to manufacturers against the risks of fluctuations in the future prices of raw cotton.[94] It has done this by providing cover schemes which although not perfect substitutes for futures' market transactions render considerable assistance to processors carrying on any class of business in the United Kingdom that involves the incurring of price-risks. In the year ended July 31, 1950, owing to rising prices and other reasons, the Commission made a net profit of 10 million in addition to 6.6 million transferred to the Reserve Fund.

G. Civil Aviation

The British Overseas Airways Corporation and the British European Airways Corporation have to provide air transport services and carry out other forms of aerial work, whether on charter terms or otherwise, in any part of the world. They have to develop these services to the best advantage, and in particular in such a way as to provide them at reasonable charges.

[90] SECOND ANNUAL REPORT OF THE COLONIAL DEVELOPMENT CORPORATION 59 (1950).
[91] Sec. 3(1).
[92] Overseas Resources Development Act, 1948, §§1(2) and 3(2).
[93] The Cotton (Centralised Buying) Act, 1947.
[94] *Id.*, §10.

The Corporations can, if necessary, acquire any undertaking providing air transport services or engaging in activities which the Corporations have power to carry on. They can also hold shares, stock, or any financial interest in these. If necessary they are allowed to promote the formation of any such undertaking and to finance it by lending money or providing guarantees for its benefit. This gives the Corporations much financial elbow room abroad where they have no monopoly. The Corporations can appoint advisory or executive committees, *e.g.*, to look after requirements of particular areas.[95]

We close our survey with a brief reference to the nationalization of the Bank of England and of Cable and Wireless Ltd. The Acts which nationalized these two companies do not state the function of the Boards set up to run these two old, established enterprises.

H. Bank of England

By the end of the 1914-18 war the Bank of England had assumed all the characteristics of a central bank. In the years that followed the Bank gradually gave up ordinary competitive business. It continued to manage the national debt—in volume its greatest task—to handle government finance in general, and to manage its own and the governments's relations with the money market.

It was constantly engaged in estimating the effect of government and other requirements and disbursements on the supply of money, and in cushioning them by its own operations, so that the supplies of liquid media of the community should not be seriously disturbed. It acted as a banker for the commercial banks, and with their full and willing cooperation, as their supervisor and controller. It issued notes for which the Treasury gets nearly all the profit. It continued as a crisis lender of the last resort, and in the decade before the 1939-45 war it became the sole instrument of national monetary policy and credit control.

When as a result of the Bank of England Act, 1946, the share capital of the Bank passed into public ownership, and the Bank came under public control, the Bank had already for many years been fully committed to implementing the policy of the government of the day. Nationalization was not intended to enable the government to interfere with the Bank's unique position. There was rather the desire, in the words of the then Chancellor of the Exchequer, "to bring the law into relation with the facts as they have been gradually evolved over the years."

I. Telecommunications

The Commonwealth Telecommunications Conference decided in 1945 that some fundamental change in the organization of Commonwealth telecommunication services was essential. One of the proposals was that private shareholder interests in the overseas telecommunication services of Britain and the Dominions should be acquired by the respective governments. This was accepted by the Commonwealth govern-

[95] Air Corporations Act, 1949, §§3 and 4.

ments represented at the Conference. The Cable and Wireless Act, 1946, which brought Cable and Wireless, Ltd. fully into public ownership was the United Kingdom government's first step towards full implementation of the agreed policy. Some shares were held already by the Treasury nominees prior to nationalization.

As in the case of the Bank of England, nationalization of Cable and Wireless, Ltd. meant little change from the operational point of view.

III

PROVISIONS AS TO HOW PUBLIC CORPORATIONS SHOULD CARRY OUT THEIR PRIMARY FUNCTIONS

In the previous section we have considered the primary economic functions of each public corporation separately. Next let us compare those provisions in relation to the way in which those functions should be discharged.

A. Items Chargeable to Revenue

Many corporations, while not forbidden to make profits, are obliged by statute to ensure that over a period their revenue is sufficient to meet outgoings properly chargable to revenue account.[96] Some of the acts prescribe the items chargeable to revenue. Thus the gas, electricity, and transport industries must charge among other things, proper allocations to general[97] reserve,[98] provisions for depreciation or renewal of assets, and, in addition, the redemption of capital.[99] The coal industry must charge allocations to general reserve. The Iron and Steel Corporation and its companies must make proper provision for depreciation or renewal of assets, but only the holding corporation must charge allocations to general reserve. The Raw Cotton Commission is to charge to revenue sums for repayment of, and interest on, advances

[96] The rule is that revenue shall not be *less* than (not merely equal to) outgoings, *i.e.*, continuous profits are legalized but not continuous losses.

[97] The acts that nationalized coal, gas, steel, civil aviation, transport, cotton, electricity, and the act which set up the Overseas Food and Colonial Development Corporations, stipulate that the corporations shall establish reserve funds in order to provide a cushion from one year to another.

[98] Sec. 35(3) of the Iron and Steel Act, 12 & 13 GEO. 6, c. 72, says ". . . the purposes of the general reserve include the checking of undue fluctuations in the prices of products of the Corporation and of the publicly-owned companies," *i.e.*, price stabilization enshrined as official policy.

[99] In this connection it is instructive to study the view of Sir R. H. Wilson, the Comptroller of the British Transport Commission, in the inaugural issue of its Review, where he says: "Briefly the British Transport Commission are under the obligation to write off over 90 years the whole of any capital liability created. This cost is only a quarter of one percent per annum and in my view it is a reasonable requirement. If there was one weakness in the financial structure of the old railway companies it was that they regarded themselves as perpetual institutions. Little attempt was consequently made to write down the vast items of capital expenditure known as 'lines open for traffic.' In the next hundred years the pace of progress will almost certainly be faster than it has been in the last century or so, and it is no more than common sense to insist either that 'lines open for traffic' and other such fixed and unsaleable assets shall be written off over a long but a defined period, or that the capital borrowing shall be amortized." British Transport Review, April, 1950, p. 31.

The cost of this policy (which as an expression of outlook of the Transport Authority would be salutary) will presumably be imposed on the users of transport and recovered from charges, and as a result have a harmful effect. Professor W. A. Lewis arrives at a similar opinion when he condemns the redemption provisions of some nationalization statutes as being the result of "confusion and fallacy." *The Price Policy of Public Corporations*, 21 Pol. Q. 184, 187 (1950).

made by the Board of Trade, and allocation to reserve. The Overseas Food Corporation and the Colonial Development Corporation must charge to revenue sums for repayment of and interest on advances by their parent Ministers, and proper allocation to reserve.

B. Period for Balancing Accounts and Accounting

Most of the corporations need not balance their accounts over one calendar year. In some cases the period is laid down, as *e.g.*, in that of the North of Scotland Hydro-Electric Board.[100] Usually, however, the matter is not clearly defined, the period being variously described as "one year with another" and an "average of good and bad years."[101] The latter phrase applies to the National Coal Board and the Raw Cotton Commission and may perhaps be intended to recognize the speculative character of their activities. The two airways corporations—which are deficitary enterprises—the Bank of England, the British Broadcasting Corporation, and Cable and Wireless Ltd., are not under a statutory obligation to balance their accounts over any period.

The acts do not explain the words "taking one year with another," or "on an average of good and bad years." From discussion on the nationalization bills, however, the impression gained is that a comparatively short period is envisaged; indeed the main stress seems to be on accounts being balanced annually. Mr. Hugh Gaitskell, when he was Minister of Fuel and Power, implied that these phrases were introduced to enable the corporations to run at a loss during the slump and so help employment.[102] Sometimes one wonders whether this provision does not really follow from the unorthodox capital structure of the corporations: they cannot generally have recourse to the normal expedients of private business such as mortgages, debentures, hidden reserves, reduced dividends, special dividend-equalization accounts which can be raided, capital reconstruction, and winding-up. The corporations' losses would be immediately revealed in the accounts; therefore some provision had to be made to enable them to keep going. The anti-slump argument strikes one as a little far fetched, for the government of the day has means and ways of persuading the corporations to accelerate their capital investments.

[100] The following is an extract from the Hydro-Electric Development (Scotland) Act, 1943, §10(1): ". . . the prices charged by the Board shall be determined by them in accordance with regulations to be made by the Secretary of State after consultation with the Electricity Commissioners, so however that the proceeds of the sale of electricity together with the other revenues of the Board may, so far as can be estimated, equal over a *term of years to be approved* by the Electricity Commissioners the sums required for meeting any expenditure which the Board may properly charge to revenue." (Italics added.) Since then the words "Secretary of State for Scotland" were substituted for "the Electricity Commissioners," under the Electricity Act, 1947, and a non-discrimination clause added.

[101] *E.g.*, the Coal Industry Nationalisation Act, 1946, says: "The policy of the Board shall be directed to securing, consistently with the proper discharge of their duties . . . that the revenues of the Board shall not be less than sufficient for meeting all their outgoings properly chargeable to revenue account (including, without prejudice to the generality of that expression, provisions in respect of their obligations [to pay the Minister of Fuel and Power certain sums of money, and to pay into a reserve fund]) . . . on an average of good and bad years." §1(4)(c).

[102] Third Debate on the National Coal Board in the House of Commons.

On the other hand, a lawyer representing the British Transport Commission (a corporation which has so far recorded losses and is constantly fighting for higher charges)[103] has said that in the Commission's view the phrase "taking one year with another" enabled it to cover a deficit over a period, and that one would have thought that period could not possibly have been limited to two years only.[104]

Whereas the phrase "taking one year with another" appears in the Transport Act, the expression "on an average of good and bad years" appears in the Coal Industry Nationalisation Act. Counsel for the National Coal Board offered one possible explanation for this when saying:[105] "If you look at the coal mining industry you take a rather long term look—perhaps a longer term look than you would in the case of transport." The National Coal Board would have to "make both ends meet" over a period of two, three or four years, for he thought that "on an average of good and bad years" meant "two, three or four years . . . having regard to the ordinary good business sense of the matter."

Mr. Ernest Davies, the Chairman of the Parliamentary Labor Party Transport Group said, before transport was nationalized, that the words "taking one year with another" were used to enable the profits or losses made one year to be carried forward to balance against losses or profits made in subsequent years, thereby giving the Commission flexibility of operation to eliminate frequent fluctuations in fares and charges, and to prevent the immediate earning of surplus revenue becoming the chief consideration as under private enterprise.[106]

Actually the British Transport Commission need not bother about interpreting the phrase "taking one year with another," that is, if the legal representative of the Commission was right when he said, when pressed to carry forward the losses without raising the charges,[107] "I think that it is assumed to be a general direction" [by the Minister of Transport] that they [the Commission] "were to disregard section 3(4)"—the provision in the Transport Act stating the obligation of the Commission to make both ends meet, taking one year with another—"as something which I think we need not consider even as a theoretical possibility."

Sir John Dalton, the editor of the *Annotated Edition of the Electricity Act, 1947,* is puzzled by the phrase "taking one year with another"; he says,[108] "the exact meaning of this expression is difficult to understand. . . . Does it mean that a surplus must be shown, taking any two consecutive years, or is it permissible for a deficit to

[102] The Comptroller of the British Transport Commission has said that if the gap an enterprise has incurred between its revenue and expenditure is attributabl to the fact that it has to pay more for its supplies and labor than it is allowed to charge under statute for its services ". . . that is not a loss-making enterprise, it is a deficit." PROCEEDINGS OF THE TRANSPORT TRIBUNAL 232, col. 2 (Jan. 1950).

[104] See PROCEEDINGS OF THE TRANSPORT TRIBUNAL SITTING AS A CONSULTATIVE COMMITTEE 217 (Jan.-Feb. 1950).

[105] *Id.* at 168.

[106] See NATIONALIZATION OF TRANSPORT 10 (1947).

[107] See PROCEEDINGS OF THE TRANSPORT TRIBUNAL SITTING AS A CONSULTATIVE COMMITTEE 6 (Jan.-Feb. 1950).

[108] *Id.* at p. 194, col. 1.

continue over a period of consecutive years so long as it is made up subsequently?" In short, he leaves the question open. However, if the British Electricity Authority takes the view adopted by one of its legal representatives, its interpretation of this phrase will be that ". . . one is not limited. . . . It is a matter to be approached on a business footing."

The Gas Council is in the same position for if it chooses to exercise the only commercial activity left to it, *viz.*, the manufacture of plant, gas fittings, or coke fittings, it must secure that the revenues from this activity are not less than sufficient to meet the "outgoings in respect thereof properly chargeable to revenue account taking one year with another."[109]

By contrast with electricity each Area Gas Board has to be self-balancing taking one year with another without internal subsidization.[110] This is unlike the individual Area Electricity Boards. For the Electricity Act provides that the whole electricity industry as a unit has to be self-supporting "taking one year with another." This is significant for it makes gas the only public corporation which cannot allow one or more of its areas to run at a loss, making good this loss with the profit from other areas. This is, of course, the logical outcome of the great degree of independence granted to areas.

This logic is not, however, repeated in the case of the iron and steel industry which even before nationalization was honeycombed with a cartel system of levy-subsidies. The companies whose assets vest in the Iron and Steel Corporation of Great Britain will remain the operative and administrative units of the nationalized industry[111] and will be run as ordinary companies. Individual companies will be under no statutory obligation to cover their total costs but the Corporation as a whole must balance its accounts over all its companies "taking one year with another." It remains to be seen to what extent the Corporation will interpret the following as a directive that the cost gap between individual units must be closed:[112]

> It shall be the duty of the Corporation so to exercise and perform their functions . . . as to secure that the combined revenues of the Corporation and all the publicly-owned companies taken together are not less than sufficient to meet their combined outgoings properly chargeable to revenue account, taking one year with another.

[109] Gas Act, 1948, §41(3).

[110] The internal subsidization is one of the thorniest economic problems in cartelized and nationalized industries. It deserves much more attention than it has received so far.

[111] Mr. G. Strauss, who is the Minister responsible for Iron and Steel, gave a solemn assurance to the Coke Oven Managers that (1) the transfer would be effected with the minimum break-up in the existing status of companies; (2) changes in the firms' relationships and reputation of the general standard of conduct towards employees would be as few as possible; (3) no outside body whatsoever should interfere with their authority over the sphere in which they *properly* wield it; (4) the companies will carry on and those in authority will also carry on. The only change will be that in the shareholding and ownership of the companies. (As reported by the Daily Telegraph, Oct. 27, 1950.) In the light of the balancing requirement and of the great cost disparity as between the different companies the value of the pledge will depend, no doubt, on the various meanings which could be given to the word "properly."

[112] Iron and Steel Act, 1949. §31.

C. Internal Subsidization

The rule about "making both ends meet" also implies that where boards engage in the supply of several products the rule about covering outgoings applies to all their activities taken together and not to each separately. There is nothing in the acts to prevent the boards from selling some of their products or services below their average costs so long as the deficit can be recouped from other sales.[113]

One could, of course, go to the extreme along this line and argue that it would indeed have been absurd to ordain otherwise. There are, one could say, common costs which can only be allocated to activities in an arbitrary fashion: any directive that each activity must pay its way would have been an invitation to disguise, rather than disclose, the true accounting position. Some activities such as the provision of houses for workmen, are properly regarded as non-commercial. One could aver that the grouping of production units into administrative and accounting units is a matter of convenience: and, therefore, that there is no merit in any particular unit breaking even. One could be stubborn and argue that joint products would constitute a major problem if every region, plant, or product had to cover its costs. But surely, to depart so completely from the principle of allowing costs to serve as a yardstick would be to indulge in economic nihilism. It would be a counsel of despair to admit that because on occasions difficulties may be encountered in finding true costs in terms of resources imputable to particular activities or regions, pricing on the basis of costs should be discarded altogether. Moreover, the grouping of some products in one corporation is entirely accidental.

D. The Cost Principle

The only sound method is to adhere grimly to the principle of pricing on the basis of costs and treat any rare departures from this principle as a concession which, as a rule, should always be avoided. For if once we depart from this principle of balance between cost and revenue of each existing group of activities, what are we left with as a guide? We would then have to determine policy by resorting to elusive palliatives or vague descriptions of activities, such as their physical suitability for the consumers. It is unfortunate from the point of view of efficiency, economy, and the consumers' choice that the British Transport Commission in its two statements of policy on the integration of freight service[114] has apparently decided to develop road, rail, and

[113] Sir Cyril W. (now Lord) Hurcomb, Chairman of the British Transport Commission, said on the principles of charging, "Internally, of course, any public service operating over a wide area is bound to conduct parts of its business at a lower level of profitability than it can secure from others, and on some parts perhaps to make a loss. . . . The Transport Commission cannot, and does not, say that it should not provide any service, which is not fully remunerative. On the contrary, we recognize that there are many areas of the country and sections of the population which cannot be left unserved and from which we must be content to ask less than a full return; just as there are others able to yield a return above the average without hardship. . . ." See Sir Cyril W. Hurcomb, *An Integrated Transport System*, AGENDA OF THE MANCHESTER STATISTICAL SOCIETY 20 (Mar. 29, 1950).

[114] BRITISH TRANSPORT COMMISSION, INTEGRATION OF FREIGHT SERVICES BY ROAD AND RAIL: A STATEMENT OF POLICY (London, July 27, 1950); BRITISH TRANSPORT COMMISSION, INTEGRATION OF FREIGHT SERVICES: SUPPLEMENTARY STATEMENT COVERING INLAND WATERWAYS (London, Oct. 1950).

waterborne services almost exclusively according to their descriptive or physical properties, "suitabilities or technically described efficiencies," and not according to the principle of the lowest cost of performing the job. The Commission's apologists would probably argue that it makes no difference whether you select by costs and consumers' choice criteria or by physical criteria of suitabilities dictated by the monopolist. But this is not the case. Moreover, the approach to the problems is entirely different. Once we cease to relate prices to costs we move in the world of such almost meaningless expressions as the "economy in tractive efforts,"[115] or the "transport specially suitable and efficient,"[116] or "loadability,"[117] instead of having as our beacon the well-tried and generally reliable principle of allowing the consumers to decide the selection by the lowest costs of the job and seeing that proceeds cover the costs.

It is obviously impossible that in all cases the rule about covering costs could be enforced especially in conditions of great pressure of demand in which the cost differentials tend to increase. The rule is, however, important and not merely a convenient expedient to be adopted only when it suits the board or commission.

There is one more thing to be said about the rule: it must be applied symmetrically. What is sauce for the goose must be sauce for the gander. If any board requires from its subordinate executives or areas that an investment should pay for itself in the direct activity for which it is invested without consideration of external economies which the investment produces to help other activities or other areas, it is not right for the board in presenting accounts to the nation to fall back on the principle that the balance is to be expected on a wider basis of several activities or areas, and to claim credit for external economies.

A lack of parallelism between the treatment by the board and the treatment of the board's own activities only leads to giving the board arbitrary power towards its areas or executives and must lead to frustration and inefficiency. Generally speaking the size of the balancing unit should be as small and not as large as possible, if resources are not to be squandered. And finally let us remember that resources can be squandered not only by positive mal-investments, but also by negative mal-investments, that is, by keeping open unsuitable units which should be closed.

It is gratifying that the National Coal Board is evidently committing itself to following the rule.[118] Yet its great keenness to obtain approval for a zone-delivered

[115] See the first of the documents cited note 114, *supra*.

[116] See the second of the documents cited note 114, *supra*.

[117] BRITISH TRANSPORT COMMISSION, DRAFT OUTLINE OF PRINCIPLES PROPOSED TO BE EMBODIED IN A CHARGES SCHEME FOR MERCHANDISE TRAFFIC 5 *et seq.* (London, Dec. 1949).

[118] With regard to the interpretation by the National Coal Board of its ability as implied in its statute to run either some of its areas at a loss or sell some of its products at a loss so long as these "losses" are covered by other areas or by the sale of other products, it would seem that the Board is aware of this ability but does not want to utilize it too often. In the *Third Annual Report of the National Coal Board*, we find the following statement: ". . . the Plan [*i.e.*, the Board's national plan for the coal industry] assumes that the aim of the Board will be to avoid—except for special reasons—running any part of their business or activity at a loss." Economists will keep their eyes open to see how the words "any part" will be interpreted.

system of coal prices is a development which does not seem to harmonize with all the implications of the rule.

As regards the Iron and Steel Corporation it remains to be seen whether it will decide that its units shall work towards covering their costs. The problem here should be easier than in the case of coal since even before nationalization the coal industry was an accountants' paradise as a result of the complicated system of inter-unit subsidies and levies under the wartime Coal Charges Orders.[119] Prior to nationalization, the steel industry maintained that there was no arrangement "for pooling profits or subsidizing the less efficient at the expense of the more efficient firms," in spite of the existence of artificial arrangements in steel prices which they claim are designed to deal with the abnormal cost factors, and which affect the firms independently of whether they are efficient, or making profits or losses.[120]

Transport constitutes a complete departure from the rule and this is something that cannot be glossed over lightly. The view of both the Minister of Transport and the British Transport Commission seems to be that since the whole idea of the Transport Act is to integrate all forms of inland transport it would be wrong to require road, rail, canal, etc. each to pay its way either nationally or by areas.

E. Pricing of Products and Services

The main way in which the boards can attempt to ensure that they "make both ends meet" is by charging prices for their goods and services that will leave them with a profit. Can they do this? To what extent is this power within their control?

Unlike many nationalized industries the two Airways Corporations are held to a rigid price schedule by international regulation. The Corporations are not able arbitrarily to increase their revenue by raising fares and the British Overseas Airways Corporation claims that it would not even be its desire in principle so to do.[121] The Air Corporation Act, 1949, states that the Corporations are to provide services "at reasonable charges."

Under its statute the British Transport Commission must submit its charges to the Transport Tribunal[122] for confirmation, to determine the charges to be made for the services and facilities it provides.[123] The tribunal holds a public inquiry into the draft scheme, and after having heard the Commission and any persons entitled to lodge objects and representations, either confirms, amends or rejects the scheme.

[119] For an interesting report on the working of the Coal Charges Account, see MINISTRY OF FUEL AND POWER, FINANCIAL POSITION OF COAL MINING INDUSTRY—COAL CHARGES ACCOUNT (London, 1945), CMD. No. 6617.

[120] See *Iron and Steel Prices*, in British Iron and Steel Federation's Monthly Statistical Bulletin, June, 1948, page 3.

[121] See BRITISH OVERSEAS AIRWAYS ANNUAL REPORT FOR 1949-1950 21.

[122] It is interesting to note that the Minister of Transport can appear at a Tribunal in opposition to the British Transport Commission; see, *e.g.*, PROCEEDINGS OF THE TRANSPORT TRIBUNAL SITTING AS A CONSULTATIVE COMMITTEE 5 (Jan.-Feb. 1950).

[123] Mr. David Blee, a member of the Railway Executive, said: ". . . the charges scheme will, or should, relate to the Commission's undertakings as a whole—to the Commission's inland transport undertakings as a whole. They should desirably reflect the Commission's considered policy on integration. . . ." PROCEEDINGS OF THE PERMANENT MEMBERS OF THE TRANSPORT TRIBUNAL 47 (Jan. 1950).

When a charges scheme is in operation, applications can be made to the tribunal for its amendment by the Minister of Transport, the Transport Commission, or others affected by the scheme. Also the Minister of Transport may at any time require the Transport Tribunal to review the operation of any charges scheme. The tribunal may then after a public inquiry alter the scheme in such a manner as it thinks fit or decide that no alteration is necessary.[124] Thus the British Transport Commission cannot act as it pleases in the matter of charges to the public. But whereas on the revenue side it is limited, there is precious little to bind it on the method of costing, or indeed in the matter of supply of services.

The Gas Act does not provide such an elaborate method for determining prices[125] as does the Transport Act. An Area Board fixes tariffs for the supply of gas but if none of its tariffs meet the needs of a particular consumer, special terms are agreed. Moreover, every Area Gas Board must reduce, as far as practicable, the price of gas and coke.[126]

What are the principles behind the tariffs? Are they the same in gas and electricity? In fixing tariffs Area Boards must avoid giving undue preferences and cannot exercise discrimination against any consumer or group of consumers.[127]

Price fixing in the electricity industry is different. Here the Central Authority, unlike the Gas Council, is a producer. The Authority decides the terms on which it will supply current to the Area Boards. Different Area Boards can be charged different prices. The Authority also has the right to direct the Area Boards to modify the tariffs on which they base their charges to consumers. Like Area Gas Boards, Area Electricity Boards can, if necessary, arrange special prices for current charged to certain consumers. Electricity Boards must, however, avoid discriminating between consumers and granting undue preferences.[128]

It will be interesting to see what use the Boards will make of their powers to grant special rates. The economies of electricity supply might often justify special rates to attract consumers with a good load-factor. But there is a risk that, in time, competition between gas and electricity may result in a jungle of exceptional rates similar to that which grew up in rail transport.

The National Coal Board and the Iron and Steel Corporation are required to fix such prices as may seem to them best calculated to further the public interests in all respects and to avoid undue preferences.[129] Steel prices are to be stabilized by

[124] Transport Act, 1947, §§76-80.

[125] The charge made by an Area Gas Board for the gas which it supplies is to be according to the number of therms supplied. Gas Act, 1948, §53.

[126] Gas Act, 1948, §1(8).

[127] Gas Act, 1948, §53.

[128] Electricity Act, 1947, §37.

[129] Counsel for the National Coal Board said: "The policy of the National Coal Board . . . is, so far as they possibly can, to charge everyone the correct price for coal at the pithead—no more and no less—and not to favor one consumer above another by giving him little preferences in the way of extra service, charges and so forth." PROCEEDINGS OF THE PERMANENT MEMBERS OF THE TRANSPORT TRIBUNAL 264 (Feb. 8, 1950). Mr. Shinwell, when Minister of Fuel and Power, said: "There is no reason at all why a National Coal Board should discriminate unfairly in favor of one customer against another," and

using a general reserve fund.[130]

The legal and factual difficulties which can be encountered in trying to find out what is discrimination, can be gleaned from the following. The Lord Chancellor used the phrase "not within the public interest" when he said that it would be wholly improper to supply coal to steel works taken over by the government at a different price from that at which coal was supplied to exactly comparable steel works which remained under private ownership, for it would not be honest, and plainly not within the public interest. If he had said that it would not be honest, and *would be showing undue preference to a class of persons,* we would assume that the government's attitude is that no public corporation should be supplied with coal at a lower price than any other consumer. What he said however implies that in this particular case it is plainly not within the public interest to supply a public corporation at prices lower than those paid by other consumers, for some unspecified reason, not necessarily because it was showing undue preference, *i.e.,* he did not necessarily consider that supplying a public corporation at a lower price than any other consumer was showing undue preference.[131] A possible explanation may be that avoiding undue preference is subsumed in serving the public interest. One of the ways a board serves the public interest is by thus avoiding discrimination.

The Raw Cotton Commission must sell raw cotton at such prices as may seem to it best calculated to further the public interest in all respects. The Commission must set these prices as low as possible, while securing that its revenues are enough, with any appropriations from its reserve fund, to meet all its outgoings properly chargeable to revenue account on an average of good and bad years.

F. State Subsidies

The Air Corporation Act, 1949, provides for Exchequer grants of up to £8 millions a year to be paid to the British Overseas Airways Corporation and the British European Airways Corporation until 1956 to meet deficits. In contrast to state grants for specific purposes such as training schemes, recruitment, etc., public corporations fight shy of accepting any subsidies which would expose them to intervention and financial control by Parliament, because Parliament might take the opportunity of discussing the policy of the corporations, formulate particular policies, and make the acceptance of those postulates a condition of the subsidy.

The legal representative of the British Transport Commission held strong views on this subject. At the Transport Tribunal hearings he put forth the following contention on behalf of the Commission:[132]

---

then went on to say that discrimination might be required in favor of the export trade. (See Standing Committee of the House of Commons, Feb. 13, 1946, col. 1068). Dual pricing is also discrimination. It is dumping with the minus sign. See A. M. de Neuman and D. G. Morgan, *Some Economic Aspects of Dual Pricing,* Cartel Quarterly, July, 1951.

[130] Iron and Steel Act, 1949, §35(3).

[131] 142 H. L. DEB. 3 (5th Ser. 1946).

[132] PROCEEDINGS OF THE PERMANENT MEMBERS OF THE TRANSPORT TRIBUNAL 6 (Jan.- Feb. 1950).

The Commission are no more empowered or entitled to receive a subsidy than the Minister of Transport is entitled to give one; any proposal that the Government should subsidize the operation of the Commission is . . . actually contrary to the provisions of the Act and would be ultra vires the Minister of Transport, who could be restrained from applying public money without the consent of Parliament in a way laid down by the Act.[133]

The Iron and Steel Corporation of Great Britain will be entitled to draw subsidies from the Minister of Supply to cover the amounts by which the cost (including transport costs and import duty) of any materials or products, the import of which he has authorized, exceeds their United Kingdom resale price.[134] This is merely the continuation of a pre-nationalization practice. Although immediately prior to nationalization the coal industry was in debt to the Coal Charges Account, no similar provision for continuing pre-vesting date subsidies was included in the Coal Industry Nationalisation Act. Nor were the high costs of importing American coal to ease the 1947 fuel crisis met by the Exchequer. Owing to the necessity of importing expensive American coal to Britain in the winter of 1950-51 the question has again become topical.

G. Borrowing Powers

The British Overseas Airways Corporation and the British European Airways Corporation are allowed, with the consent of the Treasury, to borrow by temporary overdraft or otherwise, sums they need to meet their obligations or discharge their functions. In the same way the British Electricity Authority (and each Area Electricity Board), the Gas Council (and each Area Gas Board), the British Transport Commission, the Iron and Steel Corporation, the Colonial Development Corporation, the Overseas Food Corporation, the Raw Cotton Commission, and the National Coal Board, can borrow with the consent of their parent ministers.[135] The respective acts lay down the maximum amount which the latter four corporations and the British Transport Commission may have outstanding at any given time. In addition to the Iron and Steel Corporation's power to borrow, the publicly owned steel companies can, with the consent of the corporation, borrow temporarily, by overdraft or otherwise, any sums they need.

The British Electricity Authority may, with the consent of the Minister of Fuel and Power and the approval of the Treasury, issue British Electricity Stock to redeem stock, to meet the costs incurred by the Authority, or an Area Electricity Board, on capital works, to provide working capital, and to finance other authorized expenditures which the Authority thinks should be spread over a term of years. The same applies to the Gas Council, and with slight modification to the Iron and Steel Corporation.

[133] The idea that railway operation should not be subsidized is not accepted by some economists or by the Federation of British Industries (Memo of Sept. 19, 1950). They consider it wrong to pay for the upkeep of some uneconomical lines, which are retained for strategic reasons, out of transport receipts. Such losses should be subsidized from the defence budget instead of being added on to the charges.

[134] Iron and Steel Act, 1949, §5.

[135] In most cases the approval of the Treasury is also needed.

The British Overseas Airways Corporation and the British European Airways Corporation can issue stock to provide working capital, promote, acquire or invest in other undertakings, make loans to, and fulfill guarantees given for the benefit of, other undertakings, redeem stock, or provide for other capital expenditures.

The British Transport Commission has powers to issue stock similar to those of the British Electricity Authority. In addition it has power to issue stock to purchase, otherwise than by way of simple investment, securities of any body corporate which is carrying on, or which directly or indirectly controls any other body which is carrying on, any of the activities the Commission has power to undertake. The total amounts of stock which these corporations can issue are limited by their respective acts.

H. Disposal of Surplus Revenue

The nationalized industries are not exempt from any liability for any tax, duty, rate, levy or other charge whatsoever whether national or local.[136] Supposing after paying their taxes etc. they find they have more than enough revenue to make both ends meet, what are they to do with the surplus?

If the British Electricity Authority has a surplus it can apply it in any way it chooses so long as it is for the purposes of the Authority or any Area Electricity Board. The Minister of Fuel and Power can, however, give directions as to the application of any such excess. If any Area Electricity Board has a surplus it is to be used for such purposes as the Board may, with the approval of the Authority, determine.

The Colonial Development Corporation and the Overseas Food Corporation can also decide, with the approval of their responsible minister (given with the consent of the Treasury), what to do with their surplus revenue. In neither case, however, does the Act stipulate that a surplus must be applied for the purposes of the Corporation. The wording in the Coal Industry Nationalisation Act is the same as the Electricity Act, except, of course, that there is no section relating to Area Boards.[137]

The Transport Act states that any spare cash which the Commission does not immediately require for its business may be invested as it thinks proper. The Iron and Steel Corporation has similar authority with a provision "that the Corporation shall not have power . . . to invest money in securities of any company so as to make that company a subsidiary of the Corporation or so as to enable the Corporation to exercise an effective influence on the policy of the company." This provision is presumably intended as a safeguard against the Corporation expanding into new fields of activity.

[136] It should be noted that the British Broadcasting Corporation is not liable to pay a profit tax. See ARTHUR REZ, THE PROFIT TAX SIMPLIFIED (London, 2d ed. 1950).

[137] The National Coal Board's Divisions and Areas are not statutory institutions. It looks as though the first net surplus, which the Board makes, will have to be devoted to increase wages and not to reduce prices.

The Gas Act does not contain a section on surplus revenue. The impression given is that if in the long run the Gas Council and Area Gas Boards make a surplus it must be used either to reduce charges or to increase the services to the consumer, and any surplus made in the short run can be used in any way by the Council or the Boards, including the use of it for investment, so long as it is used for the purposes of the Council or the Area Boards.

Any surplus of the Airways Corporations can be applied by them in such a way as the Minister of Civil Aviation, with the approval of the Treasury, after consultation with the chairman of the particular corporation, may direct.

The Board of Trade must pay to the Raw Cotton Commission and the Commission must carry to the credit of its reserve fund, such sums as the Board, with the approval of the Treasury, may determine to represent the net profit accruing to the Commission for the discharge of its functions on or after April 1, 1946.

It is as yet too early to tell how the public corporations will interpret the provisions relating to excess revenue. Indeed, few have had much surplus revenue to dispose of; but Electricity has so far made a global profit.

I. Obligations to Employees

Like other business undertakings the public corporations have specific obligations to their employees, to the public, and to certain other social groups. Unlike other businesses the corporations have these obligations defined by acts of Parliament.

With the exception of the Raw Cotton Commission, the Bank of England, and Cable and Wireless, the corporations are required by statute to set up machinery for settling the terms and conditions of employment of their staffs. Most corporations are under a statutory obligation to secure the safety, health, and welfare of their employees, and some are required to provide training and education for them. In addition some corporations must attempt to obtain the benefit of the practical knowledge and experience of their employees.

Before 1945 many people were under the impression that under a Labor Government nationalized industries would be controlled by the workers. This has not been the case and any form of syndicalism has been thoroughly excluded from the British public corporations. Board members, appointed in their personal capacity, have included former civil servants, industrialists, former owners, accountants, and engineers, but not many representatives of the workers. The lack of workers' control has resulted in criticism of the government's form of nationalization by the left wing of the Parliamentary Labor Party and the trade union rank and file.[138]

Many workers assumed that under nationalization they would share the profits made by the industries that employed them. In actual fact the only workers who now share directly in the profits of the nationalized industries for which they work are those gas workers who were members of co-partnership schemes before nationalization. The future of these schemes is problematical especially in view of the

[138] This can clearly be seen by the resolutions submitted at the T.U.C. Congress in 1950.

ruling that the Area Gas Boards are to reduce prices to the minimum, *i.e.*, to a non-profit level. Officially, they came to an end on March 31, 1951.

The fact that previous owners draw interest from government stock which they received in exchange for the shares they held in the industries before nationalization, come shower come shine, adds wind to the troubled labor relations in Britain.

J. Obligations to the Public

The corporations are under a statutory obligation to carry out their functions efficiently. The Area Gas Boards must reduce their prices to a minimum. The British Transport Commission and other corporations must give notice to the persons most likely to be affected, before they discontinue permanently any service.

An obligation to maintain freedom of choice for their consumers is imposed on some corporations.[139] Ministers have made much of the fact that nationalization is not intended to deprive the consumer of this freedom, although it has not always been made clear between what alternatives the choice will be allowed. Several statements have been made by ministers to the effect that it is not the intention of the acts to take away the right to exercise preference between such things as gas and electricity.[140] The choice of transport facilities has been much criticized by the public as being too limited.

To see that the obligations of the public corporations to the public are carried out most of the acts provide for the setting up of consumers' councils. So far these bodies have not been very successful in reflecting the voice of the consumer. The *Financial Times*[141] said that they are about as effective as mesmerized rabbits. This is, of course, due not to the absence of good intentions or sense of duty, but to their extremely weak constitution and above all the absence of an independent secretariat and of an expert research organization to keep them alert and constructively critical with respect to intelligence supplied by the corporations which they are supposed to face.

The public are able to keep an eye on the way in which the corporations are performing their functions and carrying out their obligations by reading the annual reports issued either in accordance with the nationalization acts, or, as in the case of such corporations as Cable and Wireless, with the Companies Act, 1948.[141a] But these, with the best of intentions, can only present one side of the picture. The other side of the picture should be presented in the annual reports of the Consumers' Councils.

The accounts section of most of the annual reports is good, and often distinguishes the various activities of the corporation in order that the public may see the contribution to the general pool each section makes; costs are not always presented with the same clarity.

[139] See, *e.g.*, Transport Act, 1947, §3(2).
[140] 447 H. C. DEB. 237-238 (5th Ser. 1948).
[141] Financial Times, Dec. 4, 1950, p. 4, col. 3.
[141a] 11 & 12 GEO. 6, c. 38.

The parent ministers of the public corporations also keep an eye on their corporations. Most corporations have to make a report to their parent minister on the exercise and performance by them of their functions, as soon as possible after the end of each financial year.[142] It takes the corporations a long time to prepare their reports. Perhaps half-yearly reports are the answer.

Some acts empower the parent minister to lay down standards of products and services to be provided by the corporation.[143] In this respect the Gas Act continues a long established tradition.

The obligations to the public are not limited only to the people of the United Kingdom. The Overseas Resources Development Act, 1948, provides that the Colonial Development Corporation and the Overseas Food Corporation must have particular regard for the interests of the local populations when determining policy, and shall where they think it necessary appoint committees charged with the duty of studying and keeping the Corporations informed as to the circumstances and requirements of the inhabitants.

K. Obligations to Other Nationalized Industries

The economic actions of one public corporation often have effect on another. Coal carbonization for instance is a borderline activity. In planning or carrying out any program of capital development or reorganization of activities relating to carbonization, the Iron and Steel Corporation has a certain obligation to other public corporations; it has to consult with the National Coal Board, with the Gas Council, and with any Area Gas Board in whose area those activities are to be carried on. The National Coal Board, in carrying out any of its plans relating to carbonization, also has to consult with the Iron and Steel Corporation.[144] An Area Gas Board must also consult with the National Coal Board if the latter is engaged in the area of the Area Gas Board in activities relating to carbonization, and with other persons operating coke oven plants in the area of the Area Gas Board.[145] The National Coal Board has a similar obligation to consult with the Gas Council or an Area Gas Board, as the case may be, when planning or carrying out any program of capital development and reorganization of its activities relating to carbonization.[146]

The National Coal Board and any Area Gas Board in whose area the National Coal Board is engaged in activities relating to carbonization, are under an obligation to each other. They have to consult together, and submit to the Minister of Fuel agreed schemes for securing the coordination in the national interest of their activities relating to carbonization. Any such scheme may provide for coordinating arrangements for the marketing of products of those activities, and for incidental

[142] See, *e.g.*, Transport Act, 1947, §4(7).
[143] See, *e.g.*, §55(1) of the Gas Act, 1948.
[144] Iron and Steel Act, 1949, §47.
[145] Gas Act, 1948, §1(6).
[146] *Id.* §8.

and supplementary matters, including financial arrangements, for which provision appears to the Boards to be necessary or expedient.[147]

The gas industry is under an obligation to obtain the permission of the British Transport Commission, except in cases of emergency arising from defects in pipes or other works, before it does such things as opening or breaking up any street or bridge which is under the control or management of the Commission.[148] There are other obligations which boards have to other boards.[149]

The obligations look impressive on paper, but the acts offer no answer to the question "How are the boards to consult?" Nor do they offer an answer to the question "What will happen if for example an Area Gas Board does not agree to a request made by the National Coal Board?"[148a] Who, one might ask, is to decide which of a number of giant organizations in dispute is to have its way? Who is to say who is to stand the loss or receive the profits? Or how the losses or profits are to be shared, when a loss or profit is made on coordinated activities of several boards? Who is to be idle and who is to be busy during an economic depression? As long as investments are controlled these matters will ultimately be solved bureaucratically by the government department concerned, and where corporations fall under different tutelages, the cabinet. There is no statutory machinery for coordinating the activities and interests of various corporations, although innumerable contacts exist at various levels of the boards' hierarchies.

IV

CONCLUSIONS

The Acts do not present a full picture of either the primary functions of the public corporations or the ways in which they should be carried out. Generally they offer no interpretation of "making supplies available," "avoiding undue or unreasonable preference," "public interest," and other important phrases. Questions relating to consumers' freedom of choice, centralization, and decentralization, are in most cases left unanswered. The acts lay down that total costs must not exceed total revenue, but do not state the relation which prices must bear to costs. What is perhaps of more consequence they do not decree which are the corporations' most important duties. Whether, for example, it is more important for them to make supplies available than to make both ends meet.[150] Perhaps the most carefully defined (and the most powerful) provisions are those relating to the Treasury. Those relating to the parent ministers are nebulous.

In matters of interpretation, the corporations have drawn upon the administrators'

[147] *Id.* §51.

[148] *Id.* §56(4).

[149] See, *e.g.*, Electricity Act, 1947, §49.

[148a] A formal answer to this question is contained in the Gas Act, 1948, §51. The Minister of Fuel and Power may direct the two Boards to submit separate schemes and he may approve one or the other of them or himself make a scheme.

[150] The corporations themselves have often tended to consider that making both ends meet is their most important obligation.

knowledge. Indeed, it seems it was largely their ideas which were drawn on to fill the gap in the thinking of the nationalizers. We shall never know the exact extent to which the nationalized industries' institutions and powers have been shaped and determined by the ever-present, self-effacing, but really powerful administrative class of the civil service. The nationalizers appeared to be quite certain of the kind of legal change they wanted to make but very unsure of the institutional frame-work required to carry it out. The administrators' ideas had to be drawn on in settling many of the constitutions, powers, and duties of the boards, and, of course, their knowledge of the techniques of organization and administration has been used in getting the boards going. This has given them further influence and power.

Amongst the various aspects of the administrators' outlook is their difficulty in understanding how the activities of legally independent bodies can be and in fact are harmonized by the working of competition and the pricing system. The kind of coordination they understand best is one by means of administrative fiat.

The hegemony of the administrator partly explains many of the features of the nationalized industries. Centralization is the only possible solution if the different areas or regions or activities are to have their functions coordinated by administrative rulings, internal regulations, minutes, or what you will. It may also help in illuminating the main assumptions which appear to underlie the pricing policies of the boards. These could be divided into two:

(1) Outgoings as a whole should be covered. In so far as administrators had any ideas about economics they appear to have been crypto-capitalists, in believing that profits are a sign of efficiency and that size makes for greater efficiency. Subtleties connected with the exploitation of inelastic demand curves escaped them.

(2) Cross-subsidizations within an organization are quite reasonable. The administrator rarely seems aware of the inequity in causing some customers to pay more than cost in order that others can pay less than cost, but he is, of course, well aware of the political advantage of so doing, provided that those who are mulcted do not become too vociferous. More serious, the resulting waste of resources either is not apparent to him or does not impress him as being bad.

An "integration" to help the railways' interest is probably the real purpose of the Transport Act, 1947. The Act was really not a new departure but yet another step in a coherent process which began at least as early as the Railways Act, 1921.[150a] Ministers and governments have been changing but the continuity of policy remained as an impressive tribute to the power of the administrators. Unless the holders of a C road license[151] retain their full freedom the transport problem will be "solved" in a manner which could have been foreseen at least as early as 1928 and which would be on a throughly uneconomic basis.[152]

[150a] 11 & 12 GEO. 5, c. 55.

[151] See note 29, *supra*.

[152] In 1928 the railways were given powers to buy themselves into public road passenger transport in the belief that the community of financial interest would mitigate competition.

The distinction between the competitive and the cartel patterns of behavior is the important point—not centralization versus decentralization—and the present domination of the latter. One possible contributory cause of confusion was mentioned above: the vagueness of legislation and its tendency to lay conflicting duties on the boards without specifying the weight to be attached to each. We might emphasize the likely effects on productivity and our future standard of living of the adoption of non-economic criteria of behavior on such a large sector of the economy.

The acts have enunciated certain important principles. But those principles do not in themselves establish any clear "style" of economic behavior of the corporations. They are too few and far between. The boards of public corporations can easily drive a coach and four through them if they choose, take almost any direction they like, and still be safely within the statutes. This study has fulfilled its purpose if, while having given an outline of the economic functions of the public corporations, it has at the same time warned the reader not to be contented with external statutory façades and helped him to probe the way in which economic problems find their solution in practice.

DUKE UNIVERSITY
SCHOOL OF LAW

FACULTY 1951-1952

ARTHUR HOLLIS EDENS, B.Ph., A.M., M.P.A., Ph.D., LL.D., PRESIDENT OF THE UNIVERSITY.

JOSEPH A. MCCLAIN, JR., DEAN AND PROFESSOR OF LAW. B.A. 1925, LL.B. 1924, LL.D. 1941, Mercer University; J.S.D. 1929, Yale University; LL.D. 1944, Tulane University; Duke University since 1950.

W. BRYAN BOLICH, PROFESSOR OF LAW. A.B. 1917, Duke University; B.A. 1923, B.C.L. 1924, M.A. 1927, Oxford University; Duke University since 1927.

JOHN S. BRADWAY, PROFESSOR OF LAW AND DIRECTOR OF THE LEGAL AID CLINIC. A.B. 1911, A.M. 1915, Haverford College; LL.B. 1914, University of Pennsylvania; President, Association of Legal Aid Organizations, 1940-41; Duke University since 1931.

EDWIN C. BRYSON, ASSOCIATE PROFESSOR OF LAW. LL.B. 1937, University of Oregon; General Counsel, Duke University, since 1945; Duke University since 1931.

ROBINSON O. EVERETT, ASSISTANT PROFESSOR OF LAW. A.B. 1947, LL.B. 1950, Harvard University; Duke University since 1950.

H. CLAUDE HORACK, PROFESSOR OF LAW EMERITUS. Ph.B. 1899, LL.B. 1900, State University of Iowa; LL.B. 1904, Harvard University; LL.D. 1937, Tulane University; LL.D. 1939, Wake Forest College; President, Association of American Law Schools, 1929; Duke University since 1930; Dean, 1934-47.

ROBERT KRAMER, PROFESSOR OF LAW. A.B. 1935, LL.B. 1938, Harvard University; Duke University since 1947.

ELVIN R. LATTY, PROFESSOR OF LAW. B.S. 1923, Bowdoin College; J.D. 1930, University of Michigan; J.Sc.D. 1936, Columbia University; Duke University since 1937.

CHARLES H. LIVENGOOD, JR., ASSOCIATE PROFESSOR OF LAW. A.B. 1931, Duke University; LL.B. 1934, Harvard University; Duke University since 1946.

CHARLES L. B. LOWNDES, PROFESSOR OF LAW. A.B. 1923, Georgetown University; LL.B. 1926, S.J.D. 1931, Harvard University; Duke University since 1934.

DOUGLAS B. MAGGS, PROFESSOR OF LAW. A.B. 1922, J.D. 1924, University of California; S.J.D. 1926, Harvard University; Duke University since 1930.

MALCOLM MCDERMOTT, PROFESSOR OF LAW. A.B. 1910, Princeton University; LL.B. 1913, Harvard University; Duke University since 1930.

DALE F. STANSBURY, PROFESSOR OF LAW AND FACULTY DIRECTOR OF LAW LIBRARY. B.S. 1914, Valparaiso University; LL.B. 1917, Indiana University; J.S.D. 1929, Yale University; Duke University since 1946.

ROBERT R. WILSON, PROFESSOR OF POLITICAL SCIENCE AND LECTURER IN INTERNATIONAL LAW. A.B. 1918, LL.D. 1940, Austin College; A.M. 1922, Princeton University; Ph.D. 1927, Harvard University; Duke University since 1925.

The Law School of Duke University

The Law School of Duke University is a member of the Association of American Law Schools and is on the list of "Approved Law Schools" of the American Bar Association. The course of study provided covers the wide and varied range of subjects found in other national law schools. The training given is designed to prepare lawyers for practice in every state. Indicative of the national character of the School is the fact that the student body is drawn from thirty-six states and 138 colleges and universities.

The School of Law requires for admission the satisfactory completion of three years of academic work, but provision has been made for the admission of veterans who have earned not less than two years of college credits of good quality. Beginning students may enroll at the opening of the Fall semester.

The Law School occupies a building constructed on the Duke University campus in 1930. Its well-rounded law library, with a collection of over 85,000 volumes, is the largest in the South. Living accommodations for law students are provided in the new Graduate Dormitory Center and in the log cabin group. The beautiful location in the Duke Forest and the healthful climate of the Piedmont section of North Carolina afford an excellent environment for intellectual work.

Information as to courses of study and probable expenses will be sent upon inquiry to

THE DEAN, DUKE UNIVERSITY LAW SCHOOL
BOX C, DUKE STATION
DURHAM, NORTH CAROLINA

LAW AND CONTEMPORARY PROBLEMS

VOL. 17

NOS. 1–4

1952

PUB. 752

UNIVERSITY MICROFILMS
ANN ARBOR, MICHIGAN. 1952